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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1887.

No. ~~350~~ 71

BERNARD CALLAGHAN, ANDREW CALLAGHAN, ANDREW P. CALLAGHAN AND SHELDON A. CLARK, APPELLANTS,

vs.

EUGENE B. MYERS.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

FILED OCTOBER 5, 1885.

accession 23867

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No. 336.

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APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

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1 Pleas in the circuit court of the United States for the northern district of Illinois, held at the United States court-rooms, in the city of Chicago, in the district aforesaid, before the Hon. John M. Harlan, one of the justices of the Supreme Court of the United States, the Hon. Thomas Drummond, judge of the United States circuit court for the seventh circuit, and the Hon. Henry W. Blodgett, district judge of the United States for said northern district of Illinois, on Thursday, the ninth day of July, in the July term of said court, in the year of our Lord one thousand eight hundred and eighty-five, and of our Independence the one hundred and tenth year.

WM. H. BRADLEY, *Clerk.*

NORTHERN DISTRICT OF ILLINOIS, *ss:*

EUGENE B. MYERS
vs.
BERNARD CALLAGHAN, ANDREW CALLAGHAN, Andrew P. Callahan, Sheldon A. Clark, Marshall D. Ewell, and V. B. Denslow. } In Chancery.

Be it remembered that on the seventeenth day of December, 1877, came the complainant, by his solicitor, and filed in the office of the clerk of the circuit court of the United States for the northern district of Illinois, at Chicago, in said district, his bond for costs and bill of complaint in said entitled cause, which said bond and
2 bill are, respectively, in the words and figures following, to wit:

Bond for Costs.

UNITED STATES OF AMERICA,
Northern District of Illinois, } *ss:*

Circuit Court. December Term, A. D. 1877. In Chancery.

EUGENE MYERS *vs.* BERNARD CALLAGHAN *et al.*

I enter myself security for costs in this cause and promise to pay all costs which may accrue to the opposite party in this action or to any of the officers of this court, and in default of payment by the plaintiff of any costs ordered or adjudged to be paid by him, hereby agree and stipulate that execution may issue against my property for any costs taxed against him.

Dated this 17th day of December, A. D. 1877.

WILLIAM D. KERFOOT.

Endorsed: Filed Dec. 17, A. D. 1877. W. H. Bradley, cl'k.

3 *Bill.*

UNITED STATES OF AMERICA, *Northern District of Illinois:*

Circuit Court of the United States, Northern District of Illinois.

To the judges of the circuit court of the United States for the northern district of Illinois:

Eugene B. Myers, of the northern district of Illinois and a citizen of said State of Illinois, brings this his bill against Bernard Callaghan, Andrew Callaghan, Andrew P. Callaghan, and Sheldon A. Clark, who are partners doing business under the firm name of Callaghan and Company, and Marshall D. Ewell and V. B. Denslow.

And thereupon your orator complains and says—

That the complainant was from the first day of August, A. D. 1865, to the first day of January, A. D. 1868, engaged in Chicago in the business of publishing law books, in partnership with Horace P. Chandler, under the firm name of E. B. Myers and Chandler; that during all of that time both the complainant and said Chandler were citizens of the United States and residents of said district;

4 that in the month of August, A. D. 1865, said firm became and were the proprietors of a book or work, which had not then been published, entitled "Report of cases at law and in chancery argued and determined in the supreme court of Illinois, by Norman L. Freeman, counselor-at-law, volume 32, containing the remainder of the cases decided at the April term and a part of the cases decided at the November term, 1863," and since generally known as the "32nd volume of Illinois Reports," and as such proprietors said firm, desiring to secure a copyright upon the same in accordance with the statutes of the United States in such cases made and provided, before the publication of said book, deposited in the office of the clerk of the district court of the United States for the northern district of Illinois a printed copy of the title of said work, and afterward, on the 17th day of January, 1866, in accordance with the law and within three months of the publication thereof, deposited in said office a copy of said work.

That said firm also, in the month of April, 1866, became and were the proprietors of a book or work, which had not then been

5 published, entitled "Reports of cases at law and in chancery argued and determined in the supreme court of Illinois, by Norman L. Freeman, counselor-at-law, volume 33, containing the residue of the cases decided at the November term, 1863, and all of the cases decided at the January term, 1864," and since generally known as the 33d volume of the Illinois Reports, and as such proprietors said firm, desiring to secure a copyright upon the same, in accordance with the statutes of the United States in such case made and provided, before the publication of said book, deposited in the office of the clerk of the district court of the United States for the northern district of Illinois a printed copy of the title of said work, and afterward, on the 8th day of June, 1866, in accordance with the

law and within three months of the publication thereof, deposited in said office a copy of said work.

That said firm also, in the month of October, 1866, became and were the proprietors of a book or work, which had not then been published, entitled "Reports of cases at law and in chancery
6 argued and determined in the supreme court of Illinois, by Norman L. Freeman, counselor-at-law, volume 34, containing a part of the cases determined at the April term, 1864," and since generally known as the "34th volume of the Illinois Reports," and as such proprietors said firm, desiring to secure a copyright upon the same in accordance with the statutes of the United States in such case made and provided, before the publication of said book, deposited in the office of the clerk of the district court of the United States for the northern district of Illinois a printed copy of the title of said work, and afterward, on the 23d day of October, 1866, in accordance with the law and within three months of the publication thereof, deposited in said office a copy of said work.

That said firm also, in the month of January, 1867, became and were the proprietors of a book or work, which had not then been published, entitled "Reports of cases at law and in chancery argued and determined in the supreme court of Illinois, by Norman L. Freeman, counselor-at-law, volume 35, containing a part of the cases decided at the April term, 1864," and since generally —
7 as the "35th volume of the Illinois Reports," and as such proprietors said firm, desiring to secure a copyright upon the same in accordance with the statutes of the United States in such case made and provided, before the publication of said book, deposited in the office of the clerk of the district court of the United States for the northern district of Illinois a printed copy of the title of said work, and afterward, on the 5th day of March, 1867, in accordance with the law and within three months of the publication thereof, deposited in said office a copy of said work.

That said firm also, in the month of October, 1867, became and were the proprietors of a book or work, which had not then been published, entitled "Reports of cases at law and in chancery argued and determined in the supreme court of Illinois, by Norman L. Freeman, counselor-at-law, volume 36, containing most of the remaining cases decided at the April term, 1864, and all of the cases decided at the November term, 1864, and the January term, 1865," and since generally known as the "36th volume of the Illinois Reports,"
8 and as such proprietors said firm, desiring to secure a copyright upon the same in accordance with the statutes of the United States in such cases made and provided, before the publication of said work, deposited in the office of the clerk of the district court of the United States for the northern district of Illinois a printed copy of the title of said work, and afterward, on the 13th day of November, 1867, in accordance with the law and within three months of the publication thereof, deposited in said office a copy of said work.

That said firm also, in the month of December, 1866, became and were the proprietors of a book or work, which had not then been

published, entitled "Reports of cases at law and in chancery argued and determined in the supreme court of Illinois, by Norman L. Freeman, counselor-at-law, volume 37, containing a part of the cases decided at the April term, 1865," and since generally known as the "37th volume of Illinois Reports," and as such proprietors said firm, desiring to secure a copyright upon the same, in accordance
9 with the statutes of the United States in such case made and provided, before the publication of said book, deposited in the office of the clerk of the district court of the United States for the northern district of Illinois a printed copy of the title of said work, and afterwards, on the 28th day of January, 1867, in accordance with the law and within three months of the publication thereof, deposited in said office a copy of said work.

That said firm also, in the month of August, 1867, became and were the proprietors of a book, which had not then been published, entitled "Reports of cases at law and in chancery argued and determined in the supreme court of Illinois, by Norman L. Freeman, counselor-at-law, volume 38, containing the remaining cases decided at the April term, 1865, and a part of the cases decided at the November term, 1865," and since generally known as the "38th volume of Illinois Reports," and as such proprietors said firm, desiring to secure a copyright upon the same in accordance with the statutes of the United States in such case made and provided, before the publication of said book, deposited in the office of the clerk of the
10 district court of the United States for the northern district of Illinois a printed copy of the title of the said work, and afterward, on the 10th day of October, 1867, in acordance with the law and within three months of the publication thereof, deposited in said office a copy of said work.

That each and all of said works were prepared by Norman L. Freeman and each of them contained a large amount of matter original with said Freeman; that each of said books contained a great number of the decisions and opinions of the supreme court of the State of Illinois, and among other original matter for each case said Freeman prepared a syllabus or head-notes, and that for many of the cases in each of said volumes he prepared a statement of the facts of the case; also in many of them he copied the instructions ruled upon by the court below; also he prepared and inserted the stipulations made and filed therein, and in many cases he gave the errors assigned; and also prepared, with great labor, for each of said volumes a table of the cases cited therein; also a table of the cases decided and
11 other original matter, and he so arranged said decisions and the matter therein contained as to make each of said books convenient and of great value to the persons using said decisions.

That said firm of E. B. Myers and Chandler purchased from said Freeman all his proprietary right in all of said books and paid him a large, valuable consideration therefor and for his labor and care in the preparation thereof, and used the labor and matter of said Freeman in publishing said books; and in consideration of the payment so made to said Freeman he agreed that this complainant and his partner should have the copyright of all of said books or works,

and said firm devided said decisions and matter accompanying them into volumes, and devided and arranged each of said volumes into pages; that said firm published a large number, to wit, over fifteen hundred copies, of each of said volumes.

That afterward, on the 13th day of June, A. D. 1868, said Horace P. Chandler sold and assigned to this complainant all his
12 right, title, and interest in and to said books and said copy-rights by a written assignment, which was duly acknowledged, delivered, and filed for record in the office of the clerk of the district court of the United States for the northern district of Illinois on the 18th day of June, 1868, and there duly recorded in the copy-right records of said court, in volume number 3, pages 407 and 408; and this complainant alleges that by virtue of said assignment he became the sole proprietor of the copyright of all of said books, and he alone was and is authorized to publish the same.

This complainant further shows that on the 10th day of June, A. D. 1868, this complainant, who was then and has ever since been a resident of the northern district of Illinois, was the sole proprietor of a book or work, which had not then been published, entitled "Reports of cases at law and in chancery argued and determined in the supreme court of Illinois, by Norman L. Freeman, counselor-at-law, volume 39, containing the remaining cases decided at
13 the November term, 1865, those decided at the January term, 1866, and a few omitted cases decided at the April term, 1864," and since generally known as the "39 volume of Illinois Reports," and as such proprietor this complainant, desiring to secure a copy-right upon the same in accordance with the statutes of the United States in such case made and provided, before the publication of said book, deposited in the office of the clerk of the district court of the United States for the northern district of Illinois a printed copy of the title of said work, and afterwards, on the 12th day of June, 1868, in accordance with the law and within three months of the publication thereof, deposited in said office a copy of said work.

That this complainant also, in the month of September, 1868, became and was the proprietor of a book, which had not then been published, entitled "Reports of cases at law and in chancery argued and determined in the supreme court of Illinois, by Norman L. Freeman, counselor-at-law, volume 40, containing the practice
14 cases decided since the April term, 1863, and a part of the cases decided at the April term, 1866," and since generally known as the "40th volume of Illinois Reports," and as such proprietor this complainant, desiring to secure a copyright upon the same in accordance with the statutes of the United States in such case made and provided, before the publication of said book, deposited in the office of the clerk of the district court of the United States for the northern district of Illinois a printed copy of the title of said work, and afterwards, on the 6th day of November, 1868, in accordance with the law and within three months of the publication thereof, deposited in said office a copy of said work.

That this complainant also, in the month of December, 1868, be-

came and was the proprietor of a book, which had not then been published, entitled "Reports of cases at law and in chancery argued and determined in the supreme court of Illinois, by Norman L. Freeman, counselor-at-law, volume 41, containing a part of
15 the cases decided at the April term, 1866," and since generally known as the "41st volume of Illinois Reports, and as such proprietor this complainant, desiring to secure a copyright upon the same in accordance with the statutes of the United States in such case made and provided, before the publication of said book, deposited in the office of the clerk of the district court of the United States for the northern district of Illinois a printed copy of the title of said work, and afterward, on the 29th day of January, 1869, in accordance with the law and within three months of the publication thereof, deposited in said office a copy of said work.

That this complainant also, in the month of May, 1869, became and was the proprietor of a book, which had not then been published, entitled "Reports of cases at law and in chancery argued and determined in the supreme court of Illinois, by Norman L. Freeman, counselor-at-law, volume 42, containing the remaining cases decided at the April term, 1866, all of those decided at the November
16 term, 1866, and a part of the cases decided at the January term, 1867," and since generally known as the "42nd volume of Illinois Reports," and as such proprietor this complainant, desiring to secure a copyright upon the same in accordance with the statutes of the United States in such case made and provided, before the publication of said book, deposited in the office of the clerk of the district court of the United States for the northern district of Illinois a printed copy of the title of said work, and afterward, on the 7th day of July, 1869, in accordance with the law and within three months of the publication thereof, deposited in said office a copy of said work.

That this complainant also, in the month of June, 1869, became and was the proprietor of a book, which had not then been published, entitled "Reports of cases at law and in chancery argued and determined in the supreme court of Illinois, by Norman L. Freeman, counsellor-at-law, volume 43, containing the remaining cases decided at the January term, 1867, a part of those decided at the
17 April term, 1867, and an omitted case decided at the April term, 1866," and since generally known as the "43d volume of Illinois Reports," and as such proprietor this complainant, desiring to secure a copyright upon the same, in accordance with the statutes of the United States in such case made and provided, before the publication of said book, deposited in the office of the clerk of the district court of the United States for the northern district of Illinois a printed copy of the title of said work, and afterward, on the 7th day of July, 1869, in accordance with the law and within three months of the publication thereof, deposited in said office a copy of said work.

That this complainant also, in the month of September, 1869, became and was the proprietor of a book, which had not then been published, entitled "Reports of cases at law and in chancery ar-

gued and determined in the supreme court of Illinois, by Norman L. Freeman, counselor-at-law, volume 44, containing the remaining cases decided at the April term, 1867, and a part of those
18 decided at the June term, 1867," and since generally known as the "44th volume of Illinois Reports," and as such proprietor this complainant, desiring to secure a copyright upon the same, in accordance with the statutes of the United States in such case made and provided, before the publication of said book, deposited in the office of the clerk of the district court of the United States for the northern district of Illinois a printed copy of the title of said work, and afterward, on the 2nd day of October, 1869, in accordance with the law and within three months of the publication thereof, deposited in said office a copy of said work.

That this complainant also, in the month of October, 1869, became and was the proprietor of a book, which had not then been published, entitled "Reports of cases at law and in chancery argued and determined in the supreme court of Illinois, by Norman L. Freeman, counselor-at-law, volume 45, containing the remaining cases decided at the June term, 1867, and a part of those decided at the September term, 1867," and since generally known as the
19 "45th volume of Illinois Reports," and as such proprietor this complainant, desiring to secure a copyright upon the same, in accordance with the statutes of the United States in such case made and provided, before the publication of said book, deposited in the office of the clerk of the district court of the United States for the northern district of Illinois a printed copy of the title of said work, and afterward, on the 8th day of December, 1869, in accordance with the law and within three months of the publication thereof, deposited in said office a copy of said work.

That this complainant also, in the month of October, 1869, became and was the proprietor of a book, which had not then been published, entitled "Reports of cases at law and in chancery argued and determined in the supreme court of Illinois by Norman L. Freeman, counselor-at-law, volume 46, containing the remaining cases decided at the September term, 1867, and a part of the cases decided at the January term, 1868," and since generally known as the "46 volume of the Illinois Reports," and as such proprietor this com-
20 plainant, desiring to secure a copyright upon the same, in accordance with the statutes of the United States in such case made and provided, before the publication of said book, deposited in the office of the clerk of the district court of the United States for the northern district of Illinois a printed copy of the title of said work, and afterward, on the 8th day of December, 1869, in accordance with the law and within three months of the publication thereof, deposited in said office a copy of said work.

That each and all of said works were prepared by Norman L. Freeman and each of them contained a large amount of matter original with said Freeman.

That each of said books contained a great number of the decisions and opinions of the supreme court of the State of Illinois, and among other original matter for each case said Freeman prepared a sylla-

bus or head-notes, and that for many of the cases in each of said volumes he prepared a statement of the facts of the case; also in many of them he copied and arranged the instructions ruled upon by the court below, and in *in* many he gave the errors as-
21 signed and in many cases the stipulations which had been made therein, and also prepared with great labor for each of said volumes a table of cases cited therein; also a table of the cases decided and other original matter, and all said matter was so arranged by said Freeman in connection with said decisions as to make each of said books and the matter therein contained convenient and valuable to the persons using said decisions.

That said complainant purchased from Freeman all his proprietary rights in all of said books, volumes numbered 39 to 46, both included, and paid him a large valuable consideration for his labor and care in the preparation thereof, and used the labor and matter of said Freeman in publishing said books, and by the agreement made by this complainant with said Freeman this complainant was *was* entitled to the copyright of said books; and this complainant divided said decisions and the matter accompanying them into volumes, and divided and arranged each of said volumes into pages.

That this complainant published a large number, to wit,
22 over fifteen hundred copies, of each of said volumes.

That this complainant has printed and sold a large number of each of said volumes, and has made a considerable profit thereby; that he has never sold any interest or share in the copyright of said books or works or either of them or authorized any one to publish any of them; but this complainant had and still has the exclusive right to publish all of said books, including as well those copyrighted by the firm of E. B. Myers and Chandler as those copyrighted by this complainant.

That afterward, about the month of July, A. D. 1877, this complainant reprinted said volumes numbered 37 and 38, and as he made some changes in the arrangement of the paging of said books he did, before publishing the same, in accordance with the act of Congress, deposit in the office of the Librarian of Congress a copy of the printed title of each volume. Said copies were so deposited on the 20th day of July, 1877; and afterward, on the 28th day of July, A. D. 1877, this complainant, within one month of the publication thereof, deposited in said office two copies of each of said works as reprinted.

23 And this complainant charges that for the labor, care, and work done by said Norman L. Freeman in the preparation of all of said books said firm of E. B. Myers and Chandler and this complainant paid a large valuable consideration to said Freeman, and that this complainant expended great labor in the preparation of said work.

And this complainant further charges that he sent by mail to the Library of Congress, at Washington, D. C., two copies of each of said books within the time required by law.

And this complainant charges that he had the exclusive right to the arrangement of each of said volumes and the exclusive right

to publish the same, and although he may not have had the exclusive right to the matter contained in the opinions of the court, yet he had the exclusive right to publish the head-notes or syllabuses, and to the arrangement of the pages of said books, and to the division of said opinions into separate volumes, and the table of cases cited and table of cases decided as published in each of said books; to the arrangement of the decisions as accompanied
24 with the head-notes, stipulations, errors assigned, instructions as aforesaid; table of cases cited, table of cases reported, and indexes accompanying the same, and the exclusive right to all of said works except to the matter contained in the opinions of the judges.

And this complainant charges that said defendants had full knowledge of said exclusive rights of this complainant, and attempted to buy the same from this complainant, but they refused to pay the price charged by this complainant, and thereupon they proceeded to reprint and publish said volumes numbered 32, 33, 34, 35, 36, 37, and 38, and in making such republication said defendants have used the said decision of the supreme court of Illinois only as published by this complainant, and have prepared said books from the said books of this complainant, and did not procure the matter for the same from original sources, and in all of said books have used the said works of this complainant, and have copied the title pages thereof, and have used the division and arrangement of this complainants in volumes and the paging thereof.

25 And that said defendants have copied the table of cases cited and tables of cases reported from each of the said books of this complainant, and have also copied from the same the stipulations, errors assigned, and instructions given by the courts.

And in publishing the statements of the cases and in the preparation of the syllabuses they have used the said books of this complainant, and the changes they have made therein are merely colorable and made only for the purpose of avoiding the claim of this complainant; and said books as printed and published by said defendants are all and each merely imitations of the volumes of this complainant, corresponding in number, as will more fully appear upon an examination and comparison of said books, which complainant is ready to produce as this honorable court may direct.

And this complainant charges that each and all of said republications of said defendants are piracies on the copyrights of this complainant, and that said books have been made by said defend-
26 ants to take the place of and, as far as they can, to supersede the said books of this complainant, and that said defendants are selling them to the persons who would otherwise buy said books of this complainant, to the great damage and loss of this complainant.

And this complainant charges that said defendants threaten to also republish the other of said volumes copyrighted by this complainant, namely, volumes numbered 39, 40, 41, 42, 43, 44, 45, and 46 of said reports, and that such republication will cause great damage to this complainant and be in gross violation of his rights.

And this complainant further charges that the aggregate value of said copyrights of this complainant is not less than $20,000, and that his damage by reason of the violation of his copyright is not less than that sum.

Wherefor this complainant prays that said defendants may make answer to this his bill, but not under oath, as an answer under oath is hereby waived, all and singular the premises, and that this court may perpetually enjoin the said defendants from publishing or selling or offering for sale any of said books, and that this
27 court may decree that all of said books so published by said defendants are forfeited to this complainant, and that said defendants be required to deliver the same to this complainant, and that said defendants may be required to render an account of all of said books published and all of the same which they have sold, and to pay to this complainant all cost and damages which he has suffered by reason of such unlawful publication, and that this complainant may have such other and further relief as the nature of his case may require and to this court shall seem meet.

EUGENE B. MYERS.

JOHN V. LE MOYNE,
Solicitor & of Counsel for Complainant.

28 UNITED STATES OF AMERICA, }
Northern District of Illinois, } ss:

On this 17th day of December, A. D. 1877, before me personally appeared Eugene B. Myers, who, being sworn, says that he is the complainant in the foregoing bill of complaint subscribed by him; that he has read said bill and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters which are therein stated to be on his information or belief, and that as to those matters he believes it to be true.

E. A. DRUMMOND,
U. S. Com.

Endorsed: Filed Dec. 17, 1877. W. H. Bradley, clerk.

On the same day, to wit, on the seventeenth day of December, 1877, there issued out of said clerk's office a writ of subpœna in said entitled cause, which said writ, together with the return of the marshal endorsed thereon, is in the words and figures following, to wit:

29 *Subpœna.*

UNITED STATES OF AMERICA, }
Northern District of Illinois, } ss:

The United States of America to Bernard Callaghan, Andrew Callaghan, Andrew P. Callaghan, and Sheldon A. Clark, partners doing business under the firm name of Callaghan and Company, Marshall Ewell, and V. B. Denslow, Greeting:

We command you and every of you that you appear before our judges of our circuit court of the United States of America for the

northern district of Illinois, at Chicago, in said district, on the first Monday in the month of January next, to answer the bill of complaint of Eugene B. Myers this day filed in the clerk's office of said court in said city of Chicago, then and there to receive and abide by such judgment and decree as shall then or thereafter be made upon pain of judgment being pronounced against you by default.

To the marshal of the northern district of Illinois to execute.

30 Witness the Hon. Morrison R. Waite, Chief Justice of the Supreme Court of the United States of America, at Chicago aforesaid, this 17th day of December, in the year of our Lord one thousand eight hundred and seventy-seven, and of our Independence the 102d.

[SEAL.] WM. H. BRADLEY, *Clerk.*

Memorandum.

The above-named defendants are notified that unless they and each of them shall enter their appearance in the clerk's office of said court, at Chicago aforesaid, on or before the day to which the above writ is returnable the complainant's bill will be taken against them as confessed and a decree entered accordingly.

WM. H. BRADLEY, *Cl'k.*

Circuit Court of the United States of America, Northern District of Illinois, *ss:* In Chancery.

EUGENE B. MYERS *vs.* BERNARD CALLAGHAN.

To Bernard Callaghan, Andrew Callaghan, Andrew P. Callaghan, and Sheldon A. Clark, partners doing business under the
31 firm name of Callaghan and Company, and Marshall D. Ewell and V. B. Denslow:

Take notice that the complainant will move this honorable court, on the 22d day of December, A. D. 1877, or as soon thereafter as counsel can be heard, that a writ of injunction issue against the within and above named defendants in accordance with the prayer of the bill herein.

Yours, etc., L. V. LE MOYNE,
Comp'l's Sol'rs.

Dated this seventeenth day of December, A. D. 1877.

I have served the within writ, together with notice of motion for injunction endorsed thereon, within my district in the following manner, to wit:

Upon Bernard Callaghan, therein named, on the 17 day of December, A. D. 1877; also upon Andrew Callaghan, therein named, on the 17 day of December, A. D. 1877; also upon Andrew P. Callaghan, therein named, on the 17 day of December, A. D. 1877; also upon Sheldon A. Clark, therein named, on the 29 day of December, A. D. 1877; also upon Marshall D. Ewell, therein named, on the 17

day of December, A. D. 1877, by personally delivering to each
32 of them a true copy of the same on the aforesaid days.

I did not serve V. B. Denslow, the other defendant, having been unable to find him or that he had any residence within my district.

J. S. HILDRUP, *U. S. Marshal,*
By J. STILLWELL, *Deputy.*

Endorsed: Filed Jan'y 10, A. D. 1878. W. H. Bradley, clerk.

33 Afterwards, to wit, on the twenty-second day of December, in the December term of said court, 1877, in the record of the proceedings thereof in said entitled cause, before Hon. Henry W. Blodgett, district judge, is the following entry, to wit:

Order.

EUGENE B. MYERS
vs.
BERNARD CALLAGHAN *et al.* } In Chancery.

Now comes the complainant, by J.V. Le Moyne, Esq., his solicitor, and moves the court for an injunction against the defendants herein; and said defendants appearing by J. L. High and Thomas Moran, their solicitors, on their motion, it is ordered by the court that the hearing upon said motion for injunction be postponed until the eighth day of January next, the said defendants, by their said solicitors, stipulating in open court that they will do nothing in the meantime to prejudice the rights of the complainant herein.

34 Afterwards, to wit, on the eighth day of January, 1878, in the December term of said court, 1877, in the record of the proceedings thereof in said entitled cause, before Hon. Henry W. Blodgett, district judge, is the following entry, to wit:

Order.

EUGENE B. MYERS
vs.
BERNARD CALLAGHAN *et al.* } In Chancery.

Now come the parties, by their solicitors, and thereupon it is ordered by the court that the hearing of the complainant's motion for injunction herein be postponed until Saturday morning next.

Afterwards, to wit, on the tenth day of January, 1878, came the defendants, Bernard Callaghan, Andrew Callaghan, Andrew
35 P. Callahan, Sheldon A. Clark, and Marshall D. Ewell, by their solicitor, and file in said clerk's office their appearance in said entitled cause, which said appearance is in the words and figures following, to wit:

Appearance.

United States Circuit Court, Northern District of Illinois. In Chancery.

EUGENE B. MYERS

vs.

BERNARD CALLAGHAN, ANDREW CALLAGHAN, ANDREW P. CALLAghan, and Sheldon A. Clark, Marshall D. Ewell, and V. B. Denslow.

I hereby enter the appearance of defendants, Bernard Callaghan, Andrew Callaghan, Andrew P. Callaghan, Sheldon A. Clark, and Marshall D. Ewell.

J. L. HIGH, *Solicitor.*

Endorsed: Filed Jan'y 10, 1878. W. H. Bradley, cl'k.

36 Afterwards, to wit, on the twelfth day of January, 1878, in the December term of said court, 1877, in the record of the proceedings thereof in said entitled cause, before Hon. Henry W. Blodgett, district judge, is the following entry, to wit:

Order.

EUGENE B. MYERS
vs.
BERNARD CALLAGHAN *et al.* } In Chancery.

Now come the parties, by their solicitors, and the complainant having moved for a preliminary injunction herein upon affidavits filed, it is thereupon ordered by the court that it be referred to Henry W. Bishop, Esq., the master in chancery of this court, to examine the bill and affidavits filed and report to the court whether the complainant is entitled to such injunction or not.

37 Afterwards, to wit, on the seventh day of February, 1878, in the December term of said court, 1877, in the record of the proceedings thereof in said entitled cause, before Hon. Thomas Drummond, circuit judge, is the following entry, to wit:

Order.

EUGENE B. MYERS
vs.
BERNARD CALLAGHAN *et al.* } In Chancery.

On motion time is extended one week for the defendants, Bernard Callaghan, Andrew Callaghan, Andrew P. Callaghan, and Sheldon A. Clark to answer herein.

On the same day, to wit, on the seventh day of February, 1878, came Marshall D. Ewell, by his solicitor, and filed in said clerk's office his answer to the bill in said entitled cause, which said answer is in the words and figures following, to wit:

38 *Answer.*

United States Circuit Court, Northern District of Illinois, *ss:* In Chancery.

EUGENE B. MYERS

vs.

BERNARD CALLAGHAN, ANDREW CALLAGHAN, ANDREW P. CALLAHAN, and Sheldon A. Clark, Marshall D. Ewell, and V. B. Denslow.

The separate answer of Marshall D. Ewell, one of the defendants in the above-entitled cause, to the bill of complaint of said complainant.

This defendant, saving and reserving all benefit of exception to said bill of complaint because of its manifold errors and inconsistencies, for answer thereto or unto so much thereof as he is advised it is material for him to answer, answering, says—

That he disclaimes all manner of right, title, and interest whatsoever in and to the alleged publication by the firm of Callaghan and Company of certain volumes of Illinois Reports in said bill named and in and to each and all of said volumes and all other the

39 matters and things in said bill named and every part thereof:

Without this, that any other *other* matter or thing in said bill contained material or necessary for this defendant to make answer unto and not herein well and sufficiently answered unto, confessed or avoided, traversed or denied, is true; all which matters and things this defendant is ready to aver, maintain, and prove as this honorable court shall direct, and humbly prays to be hence dismissed with his reasonable costs and charges in this behalf most wrongfully sustained.

MARSHALL D. EWELL,
By J. L. HIGH, *Solicitor.*

Endorsed: Filed the 7th day of Feb'y, A. D. 1878. W. H. Bradley, clerk.

On the same day, to wit, on the seventh day of February, 1878, came Bernard Callaghan *et al.*, by their solicitor, and filed in said clerk's office their demurrer to the bill in said entitled cause, which said demurrer is in the words and figures following, to wit:

40 *Demurrer.*

United States Circuit Court, Northern District of Illinois, *ss:* In Chancery.

EUGENE B. MYERS

vs.

BERNARD CALLAGHAN, ANDREW CALLAGHAN, ANDREW P. CALLAHAN, and Sheldon A. Clark, Marshall D. Ewell, and V. B. Denslow.

The joint and several demurrers of Bernard Callaghan, Andrew Callaghan, Andrew P. Callahan, and Sheldon A. Clark, defendants, who constitute the firm of Callaghan and Company, to the bill of complaint of Eugene B. Myers, complainant.

These defendants, as to so much of complainant's bill in the last paragraph thereof as prays a discovery and an accounting of and concerning all the volumes of said books alleged in said bill to have been published and sold by these defendants, do demur thereto, and for cause of demurrers show to the court that by such discovery and accounting complainant seeks to subject these defendants to the penalties and forfeitures prescribed in the act of Congress con-
41 cerning copyrights, and these defendants are advised that, under the rules and practice governing courts of equity, they cannot be required to make discovery of or concerning any matters and things which might subject them to penalties or forfeitures.

Wherefore and for divers other good causes of demurrer appearing in the last paragraph of said bill these defendants do demur thereto and pray the judgment of the court whether they shall be compelled to make any further or other answer to said paragraph or to make the discovery or accounting therein prayed; and pray to be hence dismissed with their reasonable costs and charges in this behalf, etc.

BERNARD CALLAGHAN,
ANDREW CALLAGHAN,
ANDREW P. CALLAHAN,
SHELDON A. CLARK,
By J. L. HIGH, *Solicitor.*

I do hereby certify that, in my opinion, the foregoing demurrer is good in point of law.

J. L. HIGH, *Of Counsel.*

42 STATE OF ILLINOIS, } *ss:*
Cook County, }

Andrew P. Callahan, being duly sworn, says he is one of the defendants in the above-entitled cause, and whose name is signed to the foregoing demurrer, and that said demurrer is not interposed for delay.

ANDREW P. CALLAHAN.

Subscribed and sworn to before me this 4th day of February, 1878.

[NOTARIAL SEAL.] MARY G. LAMPKINS,
Notary Public.

Endorsed: Filed the 7th day of Feb'y, A. D. 1878. W. H. Bradley, clerk.

43 Afterwards, to wit, on the thirteenth day of February, 1878, came Bernard Callaghan *et al.*, by their solicitor, and filed in said clerk's office their answer to the bill in said entitled cause, which said answer is in the words and figures following, to wit:

44 *Answer.*

United States Circuit Court, Northern District of Illinois. In Chancery.

EUGENE B. MYERS

vs.

BERNARD CALLAGHAN, ANDREW CALLAGHAN, ANDREW P. CALLAHAN, SHELDON A. CLARK, MARSHALL D. EWELL, and V. B. DENSLOW.

The joint and several answers of Bernard Callaghan, Andrew Callaghan, Andrew P. Callahan, and Sheldon A. Clark, defendants, who constitute the firm of Callaghan and Company, to the bill of complaint of Eugene B. Myers, complainant.

These defendants, saving and reserving all benefit of exception to said bill of complaint because of its manifold errors and inconsistencies, for answer thereto or unto so much as they are advised it is material for them to answer, answering, say:

They admit that said complainant was formerly engaged in publishing law books with one Chandler, under the firm name of E. B. Myers and Chandler, but have no knowledge as to when
45 such copartnership was formed, of the length of its duration, or the time of its dissolution, and put complainant upon proof thereof.

As to whether the said firm ever became or where the proprietors of the books mentioned in said bill and known and described as the Illinois Reports, volumes 32 to 38, inclusive, or any or either of them, these defendants have neither knowledge or information sufficient to form a belief, and neither admit nor deny the same, but insist upon strict proof thereof as to each and all of said volumes.

They admit that said firm filed a printed copy of the title page of said volume 32 in the office of the clerk of the district court of the United States for the northern district of Illinois before publication of said book, and admit that on the 17th day of January, 1866, they deposited a printed copy of said work with said clerk, but deny that such deposit was made in accordance with the law or within three

months after the publication of said work, but, on the contrary, aver that such deposit was not made until after a period of more than three months had elapsed from the date of publication.

46 They deny that said firm deposited a printed copy of the title of said volume 34 in the office of said clerk of said district court before the publication of said book, in accordance with the law, as in said bill alleged, but, on the contrary, aver that said firm did not deposit a copy of such title page in advance of the publication of said work, as they were by law required to do, as one of the conditions of attaining a copyright therefor; wherefore these defendants do and will insist that said firm never had or obtained any valid or legal copyright to said volumes 32 and 34, or to either of them.

As to said volumes 33 and 35 to 38, inclusive, and each of them, these defendants have no knowledge or information sufficient to form a belief as to whether said firm deposited the title pages thereof with said clerk in advance of publication, as in said bill alleged, or as to whether said firm deposited printed copies thereof in the office of said clerk within three months after publication, as in said bill alleged, and therefore neither admit nor deny any of the allegations of said bill pertaining thereto, but put the complainant upon

47 strict proof of each and every such allegation as to each and every of said volumes last named.

They admit that each of said volumes was prepared by Norman L. Freeman, but deny that they or any of them contained a large amount or any considerable amount of matter original with said Freeman, and deny that he prepared statements of facts for many of the cases in said volumes, and on the contrary aver that but a small amount of original matter was prepared by said Freeman for any of said volumes, and that but few statements of cases were prepared by him, and those few were drawn by him from the opinions of the court in the cases reported, and deny that he prepared any tables of cases cited for either or any of said volumes, and deny that he so arranged the decisions and matter in said volumes contained as to make said volumes convenient or of value to the persons using them.

They have no knowledge or information as to whether said firm ever purchased of said Freeman his right in said volumes or either of them, or ever paid him any consideration therefor or for

48 his labor and care in the preparation thereof, or that said firm ever used his labor and matter in publishing said books, or as to any agreement made by said firm with said Freeman concerning the copyright of said books, or as to how or by whom the decisions and matter accompanying them were divided into volumes or the volumes arranged in pages, or as to how many of said volumes were published by said firm, or as to whether said Chandler, on the 13th day of June, 1868, or at any other time, sold or assigned to complainant his right, title, and interest in and to said books and the copyright thereof, if any, or as to the right of said complainant, under such a pretended assignment, if any such was ever made; and as to each and all of said matters and things they

put complainant upon strict proof thereof as to each and all of said volumes.

As to each and all the remaining volumes of said Illinois Reports in said bill described, being volumes 39 to 46, inclusive, and whether complainant ever became or was the proprietor of either or any thereof, or ever filed any printed copy of the title page of
49 any or either thereof in said clerk's office or in the office of the Librarian of Congress, or ever deposited printed copies of either or any of said volumes with said clerk or sent the same to the Librarian of Congress, these defendants have neither knowledge or information sufficient to form a belief, and neither admit nor deny the allegations of said bill pertaining thereto, but put complainant upon strict proof of each and all such allegations as to each and all of said volumes.

They admit that each of said volumes was prepared by Norman L. Freeman, but deny that they or any of them contained a large amount or any considerable amount of matter original with said Freeman, and deny that he prepared statements of fact for many of the cases in said volumes, and on the contrary aver that but a small amount of original matter was prepared by said Freeman for any of said volumes, and that but few statements of cases were prepared by him, and those few were drawn by him from the opinions of the court in the cases reported, and deny that he prepared any tables of cases cited for either or any of said volumes, and deny that he so arranged the decisions and matter in said volumes con-
50 tained as to make said volumes convenient or of value to the persons using them.

They have no knowledge or information as to whether said firm ever purchased of said Freeman his rights in said volumes or either of them, or ever paid him any consideration therefor or for his labor and care in the preparation thereof, or that said firm used his labor and matter in publishing said books, or as to any agreement made by said firm with said Freeman concerning the copyright of said books, or as to how or by whom the decisions and matter accompanying them were divided into volumes or the volumes arranged in pages, or as to how many of said volumes were published by said firm; and as to each and all of said matters and things they put complainant upon strict proof thereof as to each and all of said volumes.

They have no knowledge or information as to how many, if any, of said volumes complainant ever sold, or as to what profit, if any, accrued to him thereby, or whether he ever sold any interest or share in his pretended copyright therein or ever authorized any person other than these defendants to publish any of them,
51 and put complainant upon strict proof of each and every allegation of said bill pertaining thereto as to each and all of said volumes.

They deny that complainant has the exclusive right to publish all or any of said books, as in said bill alleged, and aver that the same and each of them and all matters and things therein contained are public and common property, forming part of the law- of the State

of Illinois and, as such, not susceptible of copyright or in any manner literary property in which a private citizen can have a monopoly under the act of Congress regulating the subject of copyright, and that if said volumes and their contents were prepared and arranged by said Norman L Freeman, as in said bill alleged, whatever labor, literary or otherwise, was done upon said volumes by said Freeman was done by him in his official capacity as reporter of the decisions of the supreme court of Illinois, a public office then existing under and by virtue of the laws of the State of Iliinois, and to which said Freeman had been duly appointed in accordance with the laws of said State, and that any and all labor, literary or otherwise,
52 which may have been bestowed upon said volumes or either or any of them by said Freeman in such capacity as official reporter aforesaid is public and common property, not susceptible of copyright or of private literary ownership within the intent and meaning of the act of Congress regulating copyrights; of all which matters and things in this paragraph contained these defendants claim the same benefit and advantage to which they would have been entitled if set up by way of plea to said bill.

As to whether complainant ever paid any, and, if so, what, consideration to said Freeman for the labor, care, and work done by him in the preparation of said volumes 39 to 46, inclusive, or any or either of them, or whether complainant ever expended any, and, if so, what, labor in the preparation of said volumes or any or either of them, these defendants have no knowledge or information, and put complainant upon strict proof thereof as to each of said volumes.

They deny that complainant had the exclusive right to the arrangement of said volumes or any of them or the exclusive right to publish the same, or the exclusive right to publish the head-notes or syllabi, or the exclusive right to the arrangement of
53 the pages of said volumes or to the divisions of the opinions into separate volumes, or to the table of cases decided as published in each of said books, or to the arrangement of the decisions, as accompanied with head-notes, stipulations, errors assigned, instructions, tables of cases reported, indexes, or the exclusive right to said volumes as an entirety, or to any of said elements in this paragraph mentioned, either singly or in combination with either or all of such other elements, and deny that they ever had any knowledge of any such exclusive rights of said complainant, as in his said bill alleged.

They admit that they had negotiations with complainant concerning the purchase of his interest in volumes 39 to 46, inclusive, consisting of the stereotype plates and printed stock of said volumes held by complainant, and that in such negotiations complainant proposed to sell his pretended copyright in volumes 32 to 46, inclusive, but that no price or value was ever attached by either party to such pretended copyright, which were always treated as a mere incident to the proposed sale, and all offers made and received on either hand were made with reference to said stereotype plates
54 and printed stock, and it was understood by all parties that if such sale were consummated the pretended copyright of said

complainant, if any he had, in said volumes should be "thrown in" without additional charge.

They admit they have republished said volumes 32 to 38, inclusive, and admit that in making such republication they have used the opinions of the supreme court of Illinois as published by complainant, but aver that they have made corrections therein by correcting errors in names, citations, and other matters therein contained; but they deny that they have prepared said books from those of complainant or used the work of complainant, except in so far as complainant's books are free to the use of any and all persons, or have copied his title pages, or have used his paging, or have copied his tables of cases cited or reported, or the stipulations, errors assigned, or instructions given.

They deny that in publishing the statements of cases and in the preparation of the syllabi they have used complainant's books, making only colorable changes therein, as in said bill alleged, but, on the contrary, aver that the statements of cases and syllabi in said volumes as republished by these defendants are wholly origi-
55 nal and are in no sense an infringement upon those of complainant, and are entirely different from and unlike those of complainant, except in a few instances where there is an apparent resemblance, owing to the fact that those of defendant have been drawn from the opinions of the court, and those of complainant in the same cases appear to have been drawn from the same source; and they deny that the volumes so republished by them are mere imitations of those of complainant, as in said bill alleged.

And they aver that the volumes so republished by them contain large amounts of new, original, and valuable matter prepared expressly for said volumes and not contained in any of the volumes claimed by complainant.

If complainant has ever had any literary property or copyright in any of said volumes, which these defendants expressly deny, then they deny that either or any of the volumes republished by them are piracies upon complainant's copyright, or that said volumes have been republished to take the place of or supersede those of complainant, or that defendants are selling them to persons who would otherwise buy of complainant, or that complainant suffers
56 any damage or loss by reason of the premises.

They admit that they have had under consideration the republication of volumes 39 to 46, inclusive, but deny that they have published any of them, and deny that such republication, even if the same were ever undertaken or carried out by defendants, would cause any damage to complainant or be in violation of any of his rights.

If complainant has or ever had any literary property or copyright in any of said volumes, which these defendants expressly deny, and if these defendants have infringed such copyright, which they expressly deny, then they deny that the value thereof is twenty thousand dollars, or that the damage to complainant thereby is that sum, and, on the contrary, aver that such copyrights have no actual,

tangible, or appreciable value, and that complainant has sustained no loss or damage whatever.

Further answering, these defendants say that among dealers in law books little, if any, value is ever attached to the copyrights of law reports, and when such reports are out of print the copyrights therein are regarded as worthless; that in transactions concerning
57 the sales of proprietary interests in such reports the price is always fixed with reference to the value of the stereotype plates and printed stock, and the copyrights are treated only as an incident to the sale and are thrown in without additional charge; that in their negotiations with complainant the only value attached by either party to the rights of complainant in said volumes was the value of the stereotype plates and printed stock of volumes 39 to 46, for all of which he never asked of defendant a greater price than $7,000, in which was included his supposed copyright, if any, in volumes 32 to 46, inclusive.

Further answering, these defendants say that for many years prior to the filing of his bill of complaint said complainant had abandoned all of said volumes 32 to 38, inclusive; that his stereotype plates and stock of said volumes were destroyed in October, 1871, and none of said volumes were ever reproduced by complainant until about the month of July or August, 1877, when he reprinted volumes 37 and 38, as these defendants are informed; that prior thereto he had for many years repeatedly announced to these defendants and to numbers of the legal profession that he should never reproduce said volumes; that more than a year prior to the filing of said
58 bill these defendants notified complainant of their intention to republish said volumes 32 to 38, inclusive, and frequently thereafter notified him of such intention and publicly announced the same by advertisement and, from time to time as such republication progressed, during the spring and summer of 1877 notified complainant of the progress of the work, and as said volumes appeared from time to time during the spring and summer months of 1877 complainant was constantly apprised thereof, and at divers times during said year and previous thereto these defendants had various interviews and negotiations with complainant concerning such publications, and received various propositions from him for an exchange of such volumes so being republished for volumes 39 to 46, which complainant had for sale, and during all the period aforesaid and down to the filing of his bill of complaint therein complainant never in any manner objected to such republication or made any complaint or remonstrance, directly or indirectly, against the same, but, on the contrary, always appeared to acquiesce therein fully and freely and encouraged defendants to proceed therewith, and from his entire conduct during such period these defend-
59 ants always believed, down to the filing of his said bill of complaint, that such republication was being done with his full and complete acquiescence and consent.

Wherefore these defendants do and will insist that complainant, by his conduct in that behalf, is forever estopped from having or

receiving any relief of or concerning any of the matters and things in his bill set forth.

All such matters and things these defendants are ready to aver, maintain, and prove, as this honorable court shall direct, and humbly pray to be hence dismissed, with their reasonable costs and charges in this behalf most wrongfully sustained.

BERNARD CALLAGHAN,
ANDREW CALLAGHAN,
ANDREW P. CALLAHAN, AND
SHELDON A. CLARK,
By J. L. HIGH, *Their Solicitor.*

J. L. HIGH,
THOMAS A. MORAN,
Of Counsel.

Endorsed: Filed the 13th day of February, A. D. 1878. W. H. Bradley, clerk.

60 Afterwards, to wit, on the sixteenth day of February, 1878, came Henry W. Bishop, master in chancery of said court, and filed in said clerk's office his report in said entitled cause, which said report is in the words and figures following, to wit:

61 *Master's Report.*

In the Circuit Court of the United States for the Northern District of Illinois. In Chancery.

EUGENE B. MYERS, Complainant,

vs.

BERNHARD CALAGHAN *et al.*, Defendants.

To the Hon. Henry W. Blodgett, judge, &c.:

I, Henry W. Bishop, master in chancery, to whom, by an order entered in this case, the application of the complainant for a preliminary injunction was referred, hereby reports that I have been attended by the solicitors for the respective parties and have heard their arguments and examined the affidavits and pleadings submitted to me, and that, upon a full consideration of the case upon the law and the facts, I am satisfied that the application for an injunction should be denied.

All of which is respectfully submitted.

Feb. 16, 1878.

HENRY W. BISHOP,
Master in Chancery of the Circuit Court of the United States for the Northern District of Illinois.

(Endorsed:) Filed Feb. 16, '78. W. H. Bradley, cl'k.

62 Afterwards, to wit, on the eighteenth day of February, 1878, there issued out of said clerk's office a writ of subpœna
63 in said entitled cause, which said writ, together with the return of the marshal endorsed thereon, is in the words and figures following, to wit:

Subpœna.

UNITED STATES OF AMERICA, } ss:
Northern District of Illinois, }

The United States of America to V. B. Denslow, impleaded with Bernard Callaghan, *et al.*, Greeting:

We command you that you appear before our judges of our circuit court of the United States of America for the northern district of Illinois, at Chicago, in said district, on the first Monday in the month of April next, to answer the bill of complaint of Eugene B. Myers, heretofore filed in the clerk's office of said court in said city of Chicago, then and there to receive and abide by such judgment and decree as shall then or thereafter be made, upon pain of judgment being pronounced against you by default.

To the marshal of the northern district of Illinois to execute.

Witness the Hon. Morrison R. Waite, Chief Justice of the
64 Supreme Court of the United States of America, at Chicago aforesaid, this 18th day of February, in the year of our Lord one thousand eight hundred and seventy-eight, and of our Independence the 102d.

[SEAL.] WM. H. BRADLEY, *Cl'k.*

Memorandum.

The above-named defendant is notified that unless he shall enter his appearance in the clerk's office of said court, at Chicago aforesaid, on or before the day to which the above writ is returnable the complainant's bill will be taken against them as confessed and a decree entered accordingly.

WM. H. BRADLEY, *Cl'k.*

I have served the within writ within my district in the following manner, to wit:

Upon V. B. Denslow, therein named, on the 18 day of Feb-uary, A. D. 1878, by personally delivering to *each of them* a true copy of the same on the aforesaid day.

J. S. HILDRUP,
U. S. Marshal,
By D. D. SABIN, *Deputy.*

Endorsed: Filed Feb. 22, A. D. 1878. W. H. Bradley, c'lk.

65 Afterwards, to wit, on the nineteenth day of February, 1878, in the December term of said court, 1877, in the record of the proceedings thereof in said entitled cause, before Hon. Henry W. Blodgett, district judge, is the following entry, to wit:

Order.

EUGENE B. MYERS
vs.
BERNARD CALLAGHAN *et al.* } In Chancery.

Now come the parties, by their solicitors, and the defendants, by their solicitor, move the court to set aside the injunctional order entered herein on the twenty-second day of December last; and the court, after hearing arguments of counsel and being fully advised in the premises, sustains said motion. It is thereupon ordered that said injunctional order be set aside and vacated.

Afterwards, to wit, on the second day of March, 1878, came the complainant, by his solicitor, and filed in said clerk's office his exceptions to the report of the master in said entitled cause, which said exceptions are in the words and figures following, to wit;

66 *Exceptions to Report of Master.*

UNITED STATES OF AMERICA
Northern District of Illinois, } *ss:*

United States Circuit Court, Northern District of Illinois. In Chancery.

EUGENE B. MYERS, Complainant,

vs.

BERNARD CALLAGHAN *et al.*, Defendants.

Exceptions taken by Eugene B. Myers, the said complainant, to the report of Henry W. Bishop, Esq., master of the court, to whom said cause was referred by an order made therein on the twelfth day of January, A. D. 1878.

1st exception. For that said master has not certified to the court any of the questions, either of law or fact, which he has considered, examined, or determined, but, instead of so doing, has only given his opinion on the whole case of complainant, whereas the complainant submits that he should by his said report have certified the question of fact which he had examined and considered and his findings thereon.

2nd exception. For that said master has not so certified in his said report as to inform or assist the court in examining the matters

referred to said master, and has not certified any findings,
67 either of fact or law, whereas complainant submits that he should have by his said report informed the court of his findings upon the questions of fact involved in his consideration of the matter.

3rd exception. For that the opinion of said master as stated in said report is erroneous and unsupported either by the facts submitted to him or the law of the case.

Wherefore the said complainant excepts to the said master's report and appeals therefrom to the judgment of this honorable court.

JOHN V. LE MOYNE,
Solicitor & of Counsel for Complainant.

(Endorsed:) Filed March 2, 1878. Wm. H. Bradley, cl'k.

On the same day, to wit, on the second day of March, 1878, came the complainant, by his solicitor, and filed in said clerk's office his exception to the answer of Marshall D. Ewell in said entitled cause, which said exception is in the words and figures following, to wit:

68 *Exception to Answer of Marshall D. Ewell.*

UNITED STATES OF AMERICA, *Northern District of Illinois,* } *ss:*

United States Circuit Court, Northern District of Illinois. In Chancery.

EUGENE B. MYERS, Complainant,

vs.

BERNARD CALLAGHAN *et al.*, Defendants.

An exception taken by the said complainant to the insufficient answer of the said defendant, Marshall D. Ewell, to the said complainant's bill of complaint.

For that the said defendant Ewell did not in his said answer set forth whether he made or assisted in making or publishing any of the books complained of by said complainant in his said bill, to wit, volumes 32 to 38 of the Illinois Reports, and whether said defendant used the decisions of the supreme court of the State of Illinois only as published by said complainant, and whether he did or did not procure the matter for the books published by the defendants from any original source, or whether he used the said works of said complainant, or whether he copied from the books of said com-
69 plainant the tables of cases reported, and also whether he copied from said books of complainant the "stipulations, errors assigned, and instructions given by the courts," in which particular the said complainant excepts to the answer of the said

defendant as evasive, imperfect, insufficient, and humbly prays that the said defendant may be compelled to put in a full and sufficient answer thereto.

J. V. LE MOYNE,
Solicitor & of Counsel for Compl't.

(Endorsed:) Filed March 2, 1878. Wm. H. Bradley, cl'k.

Afterwards, to wit, on the second day of April, 1878, came V. B. Denslow, by his solicitor, and filed in said clerk's office his appearance in said entitled cause, which said appearance is in the words and figures following, to wit:

70 *Appearance of V. B. Denslow.*

STATE OF ILLINOIS, } *ss:*
Cook County, }

United States Circuit Court, Northern District of Illinois. In Chancery.

EUGENE D. MYERS
vs.
BERNARD CALLAGHAN, ANDREW CALLAGHAN, ANDREW P. CALLAGHAN, Sheldon A. Clark, and Marshall D. Ewell and V. B. Denslow.

I hereby enter the appearance of V. B. Denslow, one of the defendants in the above-entitled cause.

J. L. HIGH, *Solicitor.*

(Endorsed:) Filed Apr. 2, 1878. W. H. Bradley, cl'k.

Afterwards, to wit, on the twenty-third day of April, 1878, came V. B. Denslow, by his solicitor, and filed in said clerk's office his answer to the bill in said entitled cause, which said answer is in the words and figures following, to wit:

71 *Answer.*

United States Circuit Court, Northern District of Illinois. In Chancery.

EUGENE B. MYERS
vs.
BERNARD CALLAGHAN, ANDREW CALLAGHAN, ANDREW P. CALLAGHAN, and Sheldon A. Clark, Marshall D. Ewell and Van Buren Denslow.

The separate answer of Van Buren Denslow, one of the defendants in the above-entitled cause, to the bill of complaint of said complainant.

This defendant, saving and reserving all benefit of exception to said bill of complaint because of its manifold errors and inconsist-

encies, for answer thereto, or unto so much thereof as he is advised it is material for him to answer, answering, says—

That he disclaims all manner of right, title, and interest whatsoever in and to the alleged publication by the firm of Callaghan and Company of certain volumes of Illinois Reports in said
72 bill named, and in and to each and all of said volumes and all other the matters and things in said bill named and every part thereof, without this, that any other matter or thing in said bill contained material or necessary for this defendant to make answer unto, and not herein well and sufficiently answered unto, confessed or avoided, traversed or denied, is true; all which matters and things this defendant is ready to aver, maintain, and prove as this honorable court shall direct, and humbly prays to be hence dismissed with his reasonable costs and charges in this behalf most wrongfully sustained.

VAN BUREN DENSLOW,
By J. L. HIGH, *Solicitor.*

J. L. HIGH,
T. A. MORAN,
Of Counsel.

Endorsed: Filed the 23d day of April, A. D. 1878. Wm. H. Bradley, clerk.

73 Afterwards, to wit, on the twenty-fifth day of June, in the adjourned May term of said court, 1878, in the record of the proceedings thereof in said entitled cause, before Hon. John M. Harlan, one of the justices of the Supreme Court of the United States, is the following entry, to wit:

Order.

EUGENE B. MYERS
vs.
BERNARD CALLAGHAN *et al.* } In Chancery.

Now come the parties, by their solicitors, and now come on to be heard the demurrer of the defendants to the bill of complaint, and also the exceptions of complainant to the answer of the defendant, M. D. Ewell, herein, and after hearing the same the court, not being now sufficiently advised in the premises, takes the same under advisement.

And it is ordered by the court that the hearing of complainant's motion for injunction herein be postponed to October fourth next.

74 Afterwards, to wit, on the first day of July, in the July term of said court, 1878, in the record of the proceedings thereof in said entitled cause, before Hon. John M. Harlan, one of the justices of the Supreme Court of the United States, is the following entry, to wit:

Order.

EUGENE B. MYERS
vs.
BERNARD CALLAGHAN *et al.* } In Chancery.

Now come again the parties, by their solicitors, and the court, having considered and being now fully advised in the premises, sustains the demurrer of the defendants to the complainant's bill herein, and overrules the exceptions of the complainant to the answer of the defendant, Marshall D. Ewell, herein; and thereupon it is ordered by the court that proofs herein be closed within sixty days.

Afterwards, to wit, on the second day of September, 1878, there was filed in said clerk's office a stipulation in said entitled cause, which said stipulation is in the words and figures following, to wit:

75 *Stipulation.*

U. S. Circuit Court, Northern Dist. of Illinois. In Chancery.

EUGENE B. MYERS *vs.* BERNARD CALLAGHAN.

It is hereby stipulated that time for taking testimony in the above-entitled cause may be extended to November 1st, 1878.

Chicago, Aug. 30th, 1878.

JAMES L. HIGH,
Sol'c't. for Def't-,
Per T. A. MORAN, *Of Counsel.*
JOHN V. LE MOYNE,
Sol. for Compl't.

(Endorsed:) Filed Sept. 2, 1878. Wm. H. Bradley, cl'k.

Afterwards, to wit, on the seventh day of October, 1878, came the complainant, by his solicitor, and filed in said clerk's office his replication to the answer of Marshall D. Ewell in said entitled cause, which said replication is in the words and figures following, to wit:

76 *Replication to Answer of Marshall D. Ewell.*

UNITED STATES OF AMERICA, *Northern District of Illinois:*

United States Circuit Court, Northern District of Illinois. October Term, A. D. 1878. In Chancery.

EUGENE B. MYERS
vs.
BERNARD CALLAGHAN, ANDREW CALLAGHAN, ANDREW P. Callaghan, and Sheldon A. Clark, who are Partners Doing Business under the Firm Name of Callaghan and Company, and Marshall D. Ewell and V. B. Denslow.

The replication of Eugene B. Myers, complainant, to the answer of Marshall D. Ewell, one of the defendants.

This repliant, saving and reserving unto himself all and all manner of exceptions to the manifold insufficiencies of the said answer, for replication thereunto, saith that he will aver and prove his said bill to be true, certain, and sufficient in the law to be answered unto, and that the said answer of the said defendant is uncertain, untrue, and insufficient to be replied unto by this repliant, without
77 this, that any other matter or thing whatsoever in the said answer contained material or effectual in the law to be replied unto, confessed and avoided, traversed or denied, is true; all which matters and things this repliant is and will be ready to aver and prove as — honorable court shall direct, and humbly prays as in and by his said bill he hath already prayed.

J. V. LE MOYNE,
Complainant's Solicitor.

(Endorsed:) Filed Oct. 7, 1878. Wm. H. Bradley, clerk.

Afterwards, to wit, on the eighth day of October, 1878, there was filed in said clerk's office a stipulation in said entitled cause, which said stipulation is in the words and figures following, to wit:

78 *Stipulation.*

UNITED STATES OF AMERICA, *Northern District of Illinois,* } *ss:*

United States Circuit Court, Northern District of Illinois. October Term, A. D. 1878. In Chancery.

E. B. MYERS *vs.* B. CALLAGHAN *et al.*

It is hereby stipulated that the above-entitled cause be referred to Henry W. Bishop, master in chancery, to take testimony in the same and report.

JOHN V. LE MOYNE,
Sol'r for Compl't.
J. L. HIGH,
Sol'r for Defendants.

Endorsed: Filed Oct. 8, 1878. W. H. Bradley, cl'k.

79 Afterwards, to wit, on the thirteenth day of November, in the adjourned October term of said court, 1878, in the record of the proceedings thereof in said entitled cause, before Hon. Henry W. Blodgett, district judge, is the following entry, to wit:

Order.

EUGENE B. MYERS
vs.
BERNARD CALLAGHAN *et al.* } In Chancery.

On motion of complainant's solicitor, time to take proofs herein is extended sixty days.

Afterwards, to wit, on the fifteenth day of January, 1879, in the December term of said court, 1878, in the record of the proceedings thereof in said entitled cause, before Hon. Henry W. Blodgett, district judge, is the following entry, to wit:

Order.

EUGENE B. MYERS
vs.
BERNARD CALLAGHAN *et al.* } In Chancery.

On motion, time for defendants to take proofs herein is extended twenty days.

80 Afterwards, to wit, on the twenty-fourth day of January, 1879, in the December term of said court, 1878, in the record of the proceedings thereof in said entitled cause, before Hon. Thomas Drummond, circuit judge, is the following entry, to wit:

Order.

EUGENE B. MYERS
vs.
BERNARD CALLAGHAN *et al.* } In Chancery.

It is ordered that the defendants close their proofs by the tenth of February next, including that day, and that the complainant then have until the fifteenth of February next, including that day, for his testimony in rebuttal, when the case shall stand for final hearing.

Afterwards, to wit, on the tenth day of February, 1881, Judge Drummond delivered the following opinion in said entitled cause:

81 *Opinion of the Court.*

In the Circuit Court of the United States for the Northern District of Illinois.

EUGENE B. MYERS *v.* BERNARD CALLAGHAN *et al.*

FEBRUARY, 1881.

DRUMMOND, *J.:*

This is a bill filed by the plaintiff against the defendants for an infringement of the rights of the plaintiff under the copyright laws of the United States. The bill alleges substantially the following facts:

From 1865 to 1868 the plaintiff & Horace B. Chandler constituted a business firm for publishing law books, and as such firm they became the proprietors of volumes 32, 33, 34, 35, 36, 37, and 38 of the Illinois Reports. Norman L. Freeman was the reporter, under the law and by the appointment of the court, of the volumes of the reports, and the firm purchased all the proprietary rights of Freeman and paid him a valuable consideration therefor, he agreeing that the firm should have the copyright of all of said books. The firm published a considerable number of copies of each of said volumes.

82 In 1868 Chandler sold out all his interest to the plaintiff.

The plaintiff was also the proprietor of and entitled to the copyright in volumes 39, 40, 41, 42, 43, 44, 45, and 46 of the Illinois Reports, of which Freeman was also the reporter, and from him the plaintiff purchased all his interest in those volumes. The plaintiff has published a large number of copies of each of these last-named volumes and still has the copyright to all his volumes of reports from 32 to 46, inclusive. In 1877 the plaintiff reprinted volumes 37 and 38, and, as some changes were made in the arrangement of paging the books, a copy of the printed title of each volume and afterwards copies of the books themselves were deposited in the office of the Librarian of Congress. The defendants had full knowledge of the exclusive rights of the plaintiff and attempted to buy the same from him, but refused to pay the price demanded, and thereupon reprinted and published the volumes 32 to 38, inclusive, using the material contained in the volumes of the plaintiff, thereby violating the law of Congress upon the subject of copyright, not confining themselves to the use of the opinions of the court, but using the head-notes and statements of cases prepared by Mr. Freeman, and making colorable changes only, thus trying to avoid the plaintiff's rights under the law. The defendants also threaten to republish other volumes copyrighted by the plaintiff, viz., vol-

83 umes 39 to 46, inclusive, of said reports. These acts done and threatened by the defendants have caused and will cause damage to the plaintiff, and therefore he asks that the defendants may be enjoined from publishing or selling any of the said books,

and that the same so published may be forfeited to him, and that the defendants be required to deliver them up, and that an account may be rendered by the defendants of all the books published or sold, and that the defendants may pay the damages and costs which the plaintiff has sustained by their wrongful acts.

To this bill various defenses have been set up.

It is claimed that these, being volumes of reports by a reporter acting under the authority of law as a public officer, are not the subject of a copyright under the act of Congress.

It is also claimed that, even if they are the subject of copyright, the plaintiff has not complied with the act of Congress in the procurement of the copyright, and therefore none exists.

It is insisted, too, by the defendants that the volumes which are charged to be an infringement of the plaintiff's copyright are themselves independent productions of different editors and annotators—

Messrs. Ewell and Denslow—who were employed by the prin-
84 cipal defendants, Messrs. Callaghan & Co., to edit those volumes.

It is also said that the plaintiff has acquiesced in the publication of the volumes of the defendants, and that he has lost the right to maintain a suit by his own laches, and, lastly, that the plaintiff has been adjudicated a bankrupt and therefore cannot maintain this action.

It will be observed, that the plaintiff claims under a purchase from the reporter. He was an officer of the State and prepared the volumes under the authority of law, and it is insisted that because he was a public officer and acted in an official capacity he had no copyright in these volumes. In one aspect of the case there would seem to be great force in this objection. For example, if an adequate compensation was paid by the State to the reporter for the work done by him in preparing volumes of reports, then whatever property there was in the volumes arising from the labors of the reporter ought to belong to the State and not to him; but I cannot find that view was taken of the case by the State and the court in the appointment of the reporter at the time. On the contrary, it seems to have been considered that the reporter was entitled to any profits which might

arise from the sale of these volumes, and that they constituted
85 a part of the perquisites of his office. He was appointed under the authority conferred by section 20 of chapter 29 of the Revised Statutes of 1845, which required the court to appoint a reporter. Mr. Freeman was appointed under the act of 1863 and reappointed in 1869, and there appears to have been no regular salary. The office seems to have been different then from what it is now, when, it is said, adequate compensation is given by the State to the reporter for the services performed by him.

The case of Wheaton *vs.* Peters, 8 Peters, 591, as construed by the courts and the profession, has always been supposed to decide that Mr. Wheaton had a copyright in his reports, provided he had complied with the law then in force upon the subject. It is true that the majority of the court does not distinctly assert that he had that right, but it appears to be necessarily implied from the whole

reasoning in the opinion of the majority, because the court remanded the case for the purpose of ascertaining whether the reporter had complied with the acts of Congress—something which clearly ought not to have been done if the court was of the opinion that in no event was the reporter entitled to a copyright in his reports. Every reporter of the supreme court since has claimed a copyright—Peters, Howard, Black, Wallace, and Otto—and so, it is believed, has every reporter in this country—State and Federal.

86 It seems to me, therefore, that we must assume, in the absence of any express legislation by the State indicating a contrary principle, that the reporter is at least entitled to a copyright in his volumes of reports for what is the work of his own mind and hand—the head-notes, the statements which he has made in each case of the facts and of the arguments of counsel, notwithstanding it may be true that he can have no copyright in the opinions of the court.

The copyright of these volumes of reports existed, if at all, under the act of Congress of 1831, which provided that any one, in order to be entitled to the benefit of the act, must deposit before publication a printed copy of the title of the book in the clerk's office of the district court of the district where the author or proprietor should reside, and within three months from the publication of the book a copy of the same must be delivered to the clerk of the said district. Sec. 4. He must cause to be inserted in each copy of the book on the title page or the page immediately following, these words: "Entered according to act of Congress in the year ——, by A B, in the clerk's office of the district court of ——." Sec. 5.

Various objections are made by the defendants to the copyright because of non-compliance by the plaintiff with the provisions of the act of Congress. It appears that 553 copies of volume 32

87 were delivered to the State by Mr. Freeman, the reporter, on October 2, 1865, while the proper certificate of that volume was not delivered to the clerk of the district court until January 17, 1866, and it is insisted that the delivery of these volumes constituted a publication. There seems to be no further evidence on the subject than what arises from the fact of their delivery to the State. Whether they were distributed by the State or retained until after the proper certificate was entered in the clerk's office of the district court does not appear. It is argued that the delivery to the State constitutes *per se* a publication within the meaning of the statute, and as the certificate was filed after the delivery there was no copyright to the volume for that reason. These were copies for the use of the State and subject to distribution under the provisions of law. Secs. 23 and 24, chap. 29, Illinois Revised Statutes, 1845. Can we assume, in the absence of any evidence upon the subject, that a distribution was made? Mere printing of a book is not necessarily publication, and I am inclined to think it was incumbent upon the defendants to show something more than a mere delivery of the copies to the State.

The title page of volume 34, together with the printed volume

itself, seems to have been filed in the clerk's office of the dis-
88 trict court on the 23rd of October, 1866, and it is claimed that this does not show that a proper certificate was filed in the clerk's office, as required by the statute, before publication. It will be observed that the statute does not specify how long before publication the certificate should be filed. Here both acts seem to have occurred on the same day, and the presumption, I think, is, in the absence of any evidence to the contrary, that the filing of the certificate of title preceded the deposit of the volume in the clerk's office.

The title page of volume 35 was deposited with the clerk of the district court in January, 1867, and the note printed in the volume states that it was "entered according to act of Congress in the year 1866." There is no doubt this is a mistake in the imprint of the entry, as it should have been 1867 instead of 1866. The statute does not require that the note of entry should indicate the day or the month, but only the year, and if it be true that this mistake is fatal, then of course, as to that volume, the copyright is lost.

But I do not feel inclined to give so rigid a construction to the statute. The case of Baker *vs.* Taylor, 2 Blatchford, 82, is cited as being conclusive against the validity of the copyright in this vol-
ume. That was a case which arose, like this, under the act
89 of 1831. The title of the book was deposited with the clerk in 1846, and the notice of the entry, as printed in the book, stated that it had been made in 1847, and there was evidence tending to show the plaintiffs knew of the error before publication. That was an application for an injunction, which the court refused, holding that these facts deprived the plaintiff of their copyright in the book under the act of Congress, notwithstanding the date may have been a mistake. The main difference between that case and this is that here the entry states that the title was deposited in 1866 when, in fact, it was not deposited until 1867. The mistake arose probably from the volume having been printed in another State in 1866, and it was assumed that the certificate of the title page was filed in the proper office that year. It may be admitted that there is no distinction in principle between that case and this; but it seems to be rather a hard rule to deprive a party of the product of his labor simply because a mistake of this kind has been made. The author or publisher has endeavored to comply in good faith with the provisions of the statute, but has committed an error, unintentionally, it is presumed, in stating the year. According to the imprint contained in the book in this case the right would expire before it would according to the filing of the certificate of title with
the proper officers, and therefore it would seem no one could be
90 damnified by the error which was committed. In Baker *vs.* Taylor, *supra*, the court held there should be an exact compliance in every particular with the provisions of the statute, and the court remarks that in Wheaton *vs.* Peters, *supra*, the Supreme Court decided there must be a strict compliance with the provisions of law. I do not understand that the Court has laid down the rule with such unbending rigor as seems to be implied in the case cited. Undoubt-

edly a majority of the Court in the case of Wheaton *vs.* Peters held that the law must be complied with, but they do not say that if there shall be a slip in any trifling particular, therefore the author is deprived of all right to the product of his brain and of his hand. Conceding that it is a right which must exist under the law, the question is whether, if that is substantially and in good faith complied with, it is not sufficient. It seems to me that it is.

It may be admitted, therefore, that every person who claims a copyright to a book conferred by act of Congress must show that the provisions of the act have been complied with. But there is what may be called the original right of the author. It is the object of the acts of Congress to "secure" the right which thus primarily exists. Indeed, statutes of copyright seem to imply the exist-
91 ence of a natural right of the author to the product of his brain. They are passed in order to make that right after publication, in the language of the Constitution, "exclusive." So that I am not inclined to agree with the strict construction which has been placed on the acts of Congress by some of the courts. It seems to me, on the contrary, that these various provisions of law in relation to copyright should have a liberal construction in order to give effect to what may be considered the inherent right of the author to his own work.

It will be recollected that a majority of the judges, when the question first came before the Court of King's Bench in England as to the right to literary property, held it existed at common law, independent of the statute of Anne, and that this ruling was reversed by the House of Lords, that court holding the right existed only by virtue of the statute, and that this opinion of the highest appellate court of England was followed by the Supreme Court of the United States in the case of Wheaton *vs.* Peters, *supra.* But it may be affirmed with some confidence that the decisions of both courts were considered by text writers and the profession as rather trenching upon the inherent rights of authors.

There are other objections to the copyright, as that the name of Myers is alone used in the entry and the title filed with the
92 clerk does not show the name of the publisher; but these do not appear to be sustained by law or fact.

In considering the question of infringement of the copyright by the defendants it must be borne in mind what is the character of the work. They are reports of the decisions of the supreme court of this State, to which no one can have a copyright, but he may have to the head-notes and statements in each case and of the arguments of counsel. These head-notes and statements which have been made are in themselves an abridgement, the one of the opinions of the court, consisting of the principles of law decided, and the other an abstract of the facts and of the arguments.

It should also be stated that the volumes of the defendants as edited by those employed by them are very much condensed as compared with Mr. Freeman's reports, and yet the paging of the volumes is substantially the same throughout, so that the cases in the corresponding volumes appear on the same page. The list of case-

which precedes each report is the same. The defendants Ewell and Denslow, who were employed by the defendants to annotate these decisions or reports, both state upon examination that their work was independent of that of Mr. Freeman, but it appears from the evidence that all the volumes of Mr. Freeman were used in
93 thus editing or annotating; and, although it may have been their intention to make an independent work, it is apparent, from a comparison of the Freeman volumes & those of the defendants, that the former were used throughout by the editors employed by the defendants. It is true that in each volume—perhaps in the majority of cases—there is the appearance of independent labor performed by them without regard to the volumes of Mr. Freeman, but yet, in every volume, it is also apparent that Mr. Freeman's volumes were used; in some instances words and sentences copied without change; in others changed only in form; and the conclusion is irresistible that for a large portion of the work performed in behalf of the defendants the editors did not resort to original sources of information, but obtained that information from the volumes of Mr. Freeman. Undoubtedly it was competent for an editor to take the opinions of the supreme court, and possibly from the volumes of Mr. Freeman, and make an independent work, but it is always attended with great risk for a person to sit down and, with the copyrighted volume of law reports before him, undertake to make an independent report of a case. It is not difficult to do this, going to the original sources of information, to the decisions of the court, the briefs of counsel, the records on file in the clerk's office, without regard to the regular volume of reports. Any one who has
94 tried it can easily understand the difference between the headnotes of two persons, equally good lawyers and equally critical in the examination of an opinion, where they are made up independent of each other; and, bearing in mind this fact, it seems to be beyond controversy that although in many, and perhaps most, instances there is a very considerable difference between the headnotes of the defendants' volumes and those of the plaintiff, the latter have been freely used in the preparation of the former. I conclude, therefore, that the defendants have, in the preparation of those volumes, from 32 to 38, inclusive, of the Illinois Reports, used the volumes of the plaintiff so as to interfere with his copyright.

When this bill was filed an application was made to the district judge for an injunction against the defendants. That was refused, and I am inclined to think properly refused. There is, no doubt, considerable testimony in this case to show that the plaintiff did not insist so sharply upon his rights under the law as he should have done during the various interviews which took place when negotiations were pending between the parties for the sale of the plaintiff's right to these volumes to the defendants. There is some conflict in the evidence; but, taking it altogether, there cannot be said to have been any consent on the part of the plaintiff to the publica-
95 tion made by the defendants. On the contrary, it would seem as though his conduct showed that he never intended absolutely to abandon what he considered his legal rights, under the law,

to the publication of these volumes of reports. He, in fact, republished some of them and gave notice of the publication of others. This shows that he had no intention to abandon his rights. Perhaps an explanation of some expressions used by the plaintiff and of his conduct may be found in the supposition that they would come to terms, and that he would sell and they would buy whatever rights he had; but, admitting that the plaintiff was not so decided as he ought to have been, it must be also said that there was a good deal in the talk and in the declarations of the defendants which seemed to concede the rights claimed by the plaintiff—those of copyright, among others; and in such a case as this, where there is a question of abandonment of a clear legal right once existing by acquiescence or laches, the testimony ought to be reasonably conclusive of the fact before a court of equity would deprive a party of his rights under the law. I do not think that that testimony exists in this case, and, therefore, I hold that there was not that consent given by the plaintiff or that abandonment of his rights or acquiescence or laches which are claimed by the defendants.

The only other defense is that of the bankruptcy of the plaintiff. The answer made to that, and which seems to be satisfactory,
96 is that until there is an assignee appointed of the bankrupt's estate he has the right to pursue all proper legal measures for the protection of his interests; so that, on the whole, I think that the plaintiff is entitled to a decree in this case.

97 On the same day, to wit, on the tenth day of February, 1881, in the December term of said court, 1880, in the record of the proceedings thereof in said entitled cause, before Hon. Thomas Drummond, circuit judge, is the following entry, to wit:

Order.

EUGENE B. MYERS
vs.
BERNARD CALLAGHAN *et al.* } In Chancery.

This cause coming on for final hearing on the bill, answers, and testimony, and the court, being fully advised, finds that the complainant is the owner of the copyright or exclusive right of publication of the volumes described in said bill of complaint and known as volumes thirty-two (32), thirty-three (33), thirty-four (34), thirty-five (35), thirty-six (36), thirty-seven (37), and thirty-eight (38), of the Illinois Reports—

That said defendants, Bernard Callaghan, Andrew Callaghan, Andrew P. Callahan, and Sheldon A. Clark, have violated said copyright of said complainant in and to said volumes thirty-two (32), thirty-three (33), thirty-four (34), thirty-five (35), thirty-six (36), thirty-seven (37), and thirty-eight (38), by publishing, offering for sale, and selling copies thereof, and the said Marshall D.
98 Ewing and V. B. Denslow in editing the same: Therefore it is ordered and decreed that all said defendants be perpetu-

ally enjoined from further publishing or selling or transferring or removing any of said books.

And as it does not appear what number of said volumes have been published by said defendants, Bernard Callaghan, Andrew Callaghan, Andrew P. Callahan, and Sheldon A. Clark, or the value of said complainants' volumes before the illegal publication and sale by the said defendants of the copies thereof, it is ordered that this matter be referred to Henry W. Bishop, Esq., one of the masters of this court, to ascertain and report what number of each of said volumes have been printed and what number have been sold and at what prices by said defendants last named; and that the defendants last named may be examined in regard thereto and they may be required to produce their account books and papers; and that said master also ascertain and report what was the market value of each of said books of complainant, prior to the said illegal publication of said books by the defendants last named, and also what was the actual cost or value of reprinting and binding each of said volumes; and that upon the making of such report said complainant have leave to apply for a further order in regard to the
99 damages to be allowed to him for the said illegal publication and sale of said volumes; and the solicitor for complainant having made application herein upon the suggestion that since the filing of the bill in this cause said defendants last named have proceeded to publish and sell copies of the books described in said bill as volumes number thirty-nine (39), forty-one (41), forty-two (42), forty-three (43), forty-four (44), forty-five (45), and forty-six (46), of said Illinois Reports, and upon the further suggestion that such publication is in violation of the rights of said complainant, it is ordered that he have leave to file a supplemental bill herein in regard thereto.

Afterwards, to wit, on the fourteenth day of February, 1881, came the complainant, by his solicitor, and filed in said clerk's office his supplemental bill in said entitled cause, which said supplemental bill is in the words and figures following, to wit:

100 *Supplemental Bill.*

UNITED STATES OF AMERICA,
Northern District of Illinois, } *ss:*

Circuit Court of the United States, Northern District of Illinois. In Chancery.

EUGENE B. MYERS *vs.* BERNARD CALLAGHAN *et al.*

Eugene B. Myers, complainant, by leave of court, brings this his supplemental bill of complaint against Bernard Callaghan, Andrew Callaghan, Andrew P. Callahan, Sheldon A. Clark, Marshall D. Ewell, and Van Buren Denslow, defendants, and shows—

That in and by his original bill filed herein this complainant charged that at the time of filing said original bill he was the owner

of the copyright and of the exclusive right to publish the books known as volumes numbered 39, 40, 41, 42, 43, 44, 45, & 46 of the Illinois Reports; that each of said books contained a great number of the decisions and opinions of the supreme court of the State of Illinois, prepared by Norman L. Freeman, the reporter of said court, from whom
101 this complainant purchased all his proprietary rights in all of said books and paid him a large and valuable consideration therefor; and that this complainant divided and arranged said decisions and matter accompanying them into volumes, and divided and arranged each of said volumes into pages, and published a large number of each of said volumes; and that said defendants threatened to also publish the said volumes, numbered 39, 40, 41, 42, 43, 44, 45, & 46, and that such republication would be in gross violation of his rights.

Now, this complainant further charges that since the filing of said original bill herein said defendants have, in violation of the said right of this complainant, published and sold large numbers of each of said volumes, except volume number forty (40), which they threaten to publish, and in publishing each of said volumes they have used the said volumes of this complainant, and have copied the arrangement or division of this complainant of the matter contained in said volumes into volumes, and have copied his whole arrangement of each of said volumes, and have used each and
102 all of his said books by which to make their said books an imitation and copies of the said books of this complainant, and said books have been made in imitation of said books of this complainant.

And said defendants have advertised and sold their said books as the same books as those of this complainant, as shown by their advertisements filed herewith as Exhibits Nos. —.

And this complainant charges that in making their said imitations they have copied the substance and form from the said books of this complainant, and that each of said books, as published by said defendants, are mere imitations of and piracies upon the volume of this complainant of corresponding number.

And this complainant charges that in making said books said defendants have used the said books of complainant, and have not resorted to the records for the opinions of the supreme court and other matter therein contained, but have copied the same from his said books; and that in each of said books said defendants have used and copied from his said books considerable portions of the
103 original matter furnished by said Freeman, in some instances copying exactly, and in others making changes therein which were merely colorable and made only for the purpose of avoiding the copyright of this complainant.

And this complainant further charges that before any of the said publications of said defendant were made this complainant had advertised said books extensively, and that the decisions of the supreme court of Illinois as divided by this complainant into said volumes had by reason of what was done by this complainant become known by the name which had been applied to the classification so

made by this complainant, and that such division was the property of this complainant and was and is valuable and was covered and protected by his said copyright, and said defendants have copied the said arrangement and the title or name of each of said books, and have thereby caused great damage to this complainant.

And this complainant further charges that each of said books of said defendants was made to supercede and take the place of the one of the said books of this complainant of corresponding num-
104 ber, and that they are all being so sold in gross violation of his rights and greatly to his damage.

Wherefore this complainant prays that said defendants may answer this supplemental bill, but not under oath, as an answer under oath is hereby waived, and that this court may perpetually enjoin the said defendants from publishing, selling, offering for sale, or removing beyond the jurisdiction of this court any of said books, and that said defendants be required by a decree of this court to pay to said complainant all the damages which he has suffered by reason of the publication and sale of said books, and that said complainant have such other and further relief as the nature of his case may require and to this court shall seem meet.

EUGENE B. MYERS.

UNITED STATES OF AMERICA, }
Northern District of Illinois, } ss:

Eugene B. Myers on oath says that he has read the fore-
105 going bill signed by him, and that the allegations therein contained are true.

EUGENE B. MYERS.

Subscribed and sworn to before me this fourteenth day of February, A. D. 1881.

H. S. STODDARD, [SEAL.]
U. S. Com.

Endorsed: Filed Feb. 14, 1881. W. H. Bradley, clerk.

Afterwards, to wit, on the eighteenth day of February, 1881, came Bernard Callaghan, Andrew Callaghan, Andrew P. Callaghan, and Sheldon A. Clark, by their solicitor, and filed in said clerk's office their cross-bill in said entitled cause, which said cross-bill is in the words and figures following, to wit:

106 *Cross-Bill.*

UNITED STATES OF AMERICA,
Northern District of Illinois, } ss:

Circuit Court. In Chancery.

EUGENE B. MYERS
vs.
BERNARD CALLAGHAN, ANDREW CALLAGHAN, ANDREW P. Callaghan, Sheldon A. Clark, Marshall D. Ewell, and V. B. Denslow.

Original bill.

Cross-bill of complaint of Bernard Callaghan, Andrew Callaghan, Andrew P. Callaghan, and Sheldon A. Clark.

To the honorable the judges of the circuit court of the United States for the northern district of Illinois:

Your orators, Bernard Callaghan, Andrew Callaghan, Andrew P. Callaghan, and Sheldon A. Clark, heretofore copartners under the name and style of Callaghan and Company, respectfully show unto your honor that heretofore and on, to wit, the 17th day of December, A. D. 1877, Eugene B. Myers filed his certain bill of complaint in the above-entitled cause against your orators, together with
107 Marshall D. Ewell and V. B. Denslow, concerning an alleged infringement of the copyright claimed by said Myers in certain books known as volumes 32 to 38, inclusive, of Illinois Reports, and praying, among other things, a discovery, accounting, and forfeiture of said volumes; that your orators duly appeared in said cause and filed their demurrers and answers therein, and such proceedings were had therein that afterwards and on, to wit, the 10th day of February instant, an order was entered in said cause in behalf of complainant among other things providing for a discovery and an accounting from your orators as to said volumes 32 to 38, inclusive, and for the production of all books and papers of your orators relating thereto, all which matters and things will more fully appear by the record in said cause now remaining, said cause being still pending in this court.

Your orators further show that said discovery and accounting are now in progress before Henry W. Bishop, Esq., one of the masters of this court, and your orator, Bernard Callaghan, has been partially examined therein and under said order concerning the number of said — printed by your orators and now on hand, and has already been required to produce before said master, for the examination of said Myers and his counsel, books and papers of your orators
108 relating to said volumes and the number printed thereof, and that such examination is still progressing.

Your orators further aver that they now own and have in their possession certain copies of said reports from volumes 32 to 38, in-

clusive, but that said Myers claims and asserts that he is the owner thereof and entitled to a forfeiture of the same and a delivery thereof to him, which your orators deny; and that said Myers, on the 11th day of February instant, brought a certain action of replevin against your orators upon the law side of this court for the recovery of said copies, in which he procured a writ of replevin to be issued out of this court, and placed the same in the hands of the marshal of this court, directing him to seize said copies; that such writ is now in the hands of said marshal, and your orators believe and charge the truth to be that said Myers is ignorant of the precise number and whereabouts of said copies, but that as soon as such examination and discovery now progressing before said master shall have disclosed the number and location of such copies said Myers will instruct said marshal to seize the same under said writ, and that said Myers is pushing such discovery from your orators for the purpose, among other things, of aiding him in procuring the pos-
109 session and forfeiture of such copies; and your orators herewith refer to the record and proceedings in such action of replevin, and pray that they may be taken as a part hereof; and your orators believe and charge the truth to be that unless restrained by the order of this court the said Myers will continue such proceedings for the forfeiture and recovery of said copies, to the great damage, inconvenience, and oppression of your orators in the ownership of said copies.

Your orators further aver that, as they are advised by counsel and believe, the said Myers is not entitled under the rules and practice of equity to any discovery of and from your orators in aid of his said proceedings for the forfeiture of said copies, and that said Myers, having taken a decree for a discovery from your orators as to said copies, and having obtained such a discovery thereunder, as well as by reason of his acquiescence in such publication as aforesaid, is estopped in equity from any forfeiture or recovery of either or any of said copies, even if otherwise entitled thereto, which your orators deny, and that such decree and such examinations and discovery before said master as aforesaid amount to a waiver upon the part of said Myers of such forfeiture or recovery.

110 Wherefore your orators make the said Eugene B. Myers defendant hereto, and pray that he may full, true, and perfect answer make to this your orators' bill of complaint, but without oath, his answer under oath being hereby expressly waived; that upon the final hearing hereof the said Myers may be perpetually enjoined from further proceeding with said action of replevin and from instituting or carrying on any other action, suit, or proceeding in any court for the forfeiture or recovery from your orators of any copies of said volumes of Illinois Reports from 32 to 38, inclusive; that in the meantime, until the further order of this court, the said Myers may be temporarily enjoined and restrained as above prayed, and that your orators may have such other and further relief in the premises as the nature of the case may require and to equity may seem meet.

And your orators will ever pray, etc.

BERNARD CALLAGHAN,
ANDREW CALLAGHAN,
ANDREW P. CALLAGHAN, AND
SHELDON A. CLARK,
Complainants,

By J. L. HIGH, *Solicitor.*

J. L. HIGH, *Of Counsel.*

111 UNITED STATES OF AMERICA, }
Northern District of Illinois, } *ss:*

Bernard Callaghan, being duly sworn, says he is one of the complainants named in the foregoing bill of complaint; that he has heard the same read and knows the contents thereof; that the statements therein contained are true of his own knowledge, except such as are stated upon information and belief, and as to those matters he believes the same to be true.

BERNARD CALLAGHAN.

Subscribed and sworn to before me this 14 day of February, A. D. 1881.

H. W. BISHOP,
Master in Ch'y.

Endorsed: Filed the 18th day of February, A. D. 1881. Wm. H. Bradley, clerk.

112 Afterwards, to wit, on the ninth day of March, in the adjourned March term of said court, 1881, in the record of the proceedings thereof in said entitled cause, before Hon. Thomas Drummond, circuit judge, is the following entry, to wit:

Order.

EUGENE B. MYERS
vs.
BERNARD CALLAGHAN *et al.* } In Chancery.

And now, at this day, come the parties, by their respective attorneys, and the motion for a temporary injunction on the supplemental bill having been argued by the counsel of the plaintiff, on the suggestion of the court the defendants voluntarily stipulate that until the hearing of the case in this court they will not sell, deliver, or remove, except from the bind*ing* to their store, volumes 39, 41, 42, 43, 44, 45, and 46 Illinois Reports, published by them, with leave, however, to either party to apply hereafter to the court if they shall be so advised for a modification of this order.

Afterwards, to wit, on the fourteenth day of March, 1881, came Eugene B. Myers, by his solicitor, and filed in said clerk's office his demurrer to the cross-bill of Bernard Callaghan *et al.* in said
113 entitled cause, which said demurrer is in the words and figures following, to wit:

Demurer.

UNITED STATES OF AMERICA, } ss:
Northern District of Illinois, }

Circuit Court. In Chancery.

BERNARD CALLAGHAN *et al. vs.* EUGENE B. MYERS.

Cross-bill.

The demurrer of Eugene B. Myers, defendant, to the cross-bill of complaint of Bernard Callaghan *et al.*, complainants.

This defendant, not acknowledging any of the matters in the said bill of complaint contained to be true, demurs to said bill, and for cause of demur, shows that the complainants have not in and by their said cross-bill stated such a case as entitles them in a court of equity to any discovery or relief from or against this defendant touching the matters contained in the said bill.

J. V. LE MOYNE,
Solicitor for Def't.

114 I hereby certify that, in my opinion, the foregoing demurrer of Eugene B. Myers, defendant, to the cross-bill of complaint Bernard of Callaghan *et al.*, complainants, is well founded in law and proper to be filed in the above court.

JOHN V. LE MOYNE,
Sol. for Def't.

UNITED STATES OF AMERICA, } ss:
Northern District of Illinois, }

Eugene B. Myers, the defendant, on oath says that he has read the foregoing demurrer to the bill of complaint of Bernard Callaghan *et al.* in this suit, and that the same is not interposed for the purpose of delaying the said suit or any proceedings therein.

——.

Subscribed and sworn to before me this 14th day of March, A. D. 1881.

[SEAL.] H. S. STODDARD,
U. S. Com.

(Endorsed:) Filed M'ch 14, 1881. W. H. Bradley, cl'k.

115 Afterwards, to wit, on the twentieth day of May, in the adjourned May term of said court, 1881, in the record of the proceedings thereof in said entitled cause, before Hon. Thomas Drummond, circuit judge, is the following entry, to wit:

Order.

EUGENE B. MYERS *vs.* BERNARD CALLAGHAN *et al.* } In Chancery. Original Bill.

and

BERNARD CALLAGHAN *et al.* *vs.* EUGENE B. MYERS. } In Chancery. Cross-Bill.

The demurrer of the defendant to the cross-bill herein having been heretofore argued by the counsel of the respective parties and considered by the court, and the court having now intimated an opinion against said demurrer, the defendant, with permission of the court, withdraws the same and now files the answer to said cross-bill, and the plaintiffs in the cross-bill now file their replication thereto, and the plaintiff in the original bill having, by leave of court, filed his supplemental bill and the defendants therein having filed their answer thereto, it is ordered that said supplemental bill and answer be referred to Henry W. Bishop, one of the masters of this court, to take proof in regard to the issue made by said bill and answer and to report the same to the court.

116 On the same day, to wit, on the twentieth day of May, 1881, came Eugene B. Myers, by his solicitor, and filed in said clerk's office his answer to the cross-bill in said entitled cause, which said answer is in the words and figures following, to wit:

117 *Answer.*

UNITED STATES OF AMERICA, *Northern District of Illinois,* } *ss:*

United States Circuit Court. In Chancery.

BERNARD CALLAGHAN *et al. vs.* EUGENE B. MYERS.

Cross-bill.

Answer of Eugene B. Myers to the cross-bill of Bernard Callaghan, Andrew Callaghan, Andrew P. Callahan, and Sheldon A. Clark.

This defendant, saving all objection and right of exception to said cross-bill, for answer thereto, says—

That he did file his bill of complaint in this court at the time named in said cross-bill, against the parties therein named, to prevent the infringement of his copyright in volumes of the Illinois

Reports numbered from volume 32 to 46, inclusive, and that afterwards, upon final hearing, an order was entered in said cause as follows:

"This cause coming on for final hearing on the bill, answers, and testimony, and the court, being fully advised, finds that the
118 complainant is the owner of the copyright or exclusive right of publication of the volumes described in said bill of complaint and known as volumes thirty-two (32), thirty-three (33), thirty-four (34), thirty-five (35), thirty-six (36), thirty-seven (37), and thirty-eight (38) of the Illinois Reports.

"That said defendants, Bernard Callaghan, Andrew Callaghan, Andrew P. Callahan, Sheldon A. Clark, violated said copyright of said defendant — and to said volumes 32, 33, 34, 35, 36, 37, and 38, by publishing, offering for sale, and selling copies thereof, and the said Marshall D. Ewell and V. B. Denslow in editing the same.

"Wherefore it is ordered and decreed that all said defendants be perpetually enjoined from further publishing or selling, transferring or removing, any of said books.

"And as it does not appear what number of said volumes have been published by said defendants, Bernard Callaghan, Andrew Callaghan, Andrew P. Callahan, and Sheldon A. Clark, or the value of said complainant's volumes before the illegal publication and sale by the said defendants of the copies thereof, it is ordered
119 that this matter be referred to Henry W. Bishop, Esq., one of the masters of this court, to ascertain and report what number of each of said volumes have been printed and what number have been sold and at what price by said last-named defendants, and that the defendants last named may be examined in regard thereto, and they may be required to produce their account books and papers, and that said master also ascertain and report what was the market value of each of said books of complainant prior to the said illegal publication of said books by the defendant last named; and also what was the actual cost or value of reprinting and binding each of said volumes, and that upon the making of such report said complainant has leave to apply for a further order in regard to the damages to be allowed for the said illegal publication and sale of said volumes.

"And the solicitor for complainant having made application herein upon the suggestion that since the filing of the bill in this cause said defendants last named have proceeded to publish
120 and sell copies of the books described in said bill as volumes Nos. 39, 41, 42, 43, 44, 45, and 46 of said Illinois Reports, and upon the further suggestion that such publication is in violation of the rights of said complainant, it is ordered that he have leave to file a supplemental bill herein in regard thereto."

And this defendant insists that after the making of said order on final hearing said complainants herein had no right or authority, under the rules of this court, to file their said cross-bill herein, and that the same should be dismissed, and he claims the same advantage as if this objection were made by plea.

And this defendant further insists that the said order does not

provide for a discovery or an accounting, as alleged in said cross-bill, and he denies that said discovery and accounting are now in progress before Henry W. Bishop, one of the masters of this court.

And this defendant admits it to be true that said complainants had in their possession at the time of filing said cross-bill a number of the volumes in said bill named, and that this defendant claimed, and still claims, that the same belong to him.

121 That said volumes were illegally published by said complainants in violation of this defendant's copyright, and by reason thereof and of the acts of Congress in such case made and provided said copies became forfeited to this defendant.

And this defendant admits that at the time, and as alleged, he brought an action of replevin against said complainant- for the recovery of said books and procured a writ to be issued and on the same day placed it in the hands of the marshal with directions to execute the same.

And this defendant denies that he is seeking or attempting to secure any discovery from said complainant- for the purpose of aiding him in procuring the possession of said books, as alleged in said cross-bill.

And this defendant insists that he has the right to prosecute said suit of replevin, and that if he is not entitled to the possession of said books said complainants have a complete remedy at law, and this defendant claims the same benefit of this defence hereto as if the same was claimed by demurrer.

122 And this defendant denies that said volumes were published by said complainants with his knowledge or acquiescence, or that he ever consented thereto; and this defendant shows that by the act of Congress of July 8, 1870, it is provided—

"That every person who, after the recording of the title of any book as provided by this chapter, shall, within the time limited and without the consent of the proprietor of the copyright first obtained in writing, signed in presence of two or more witnesses, print, publish, or import, or, knowing the same to be printed, published, or imported, shall sell or expose to sale any copy of such book, shall forfeit every copy thereof to such proprietor, and shall also forfeit and pay such damages as may be recovered in a civil action by such proprietor in any court of competent jurisdiction."

And this defendant claims the benefit of the provisions of said act.

And this defendant denies that he seeks any discovery from said complainants or that he has done anything to waive or abandon the right given to him by said statute.

123 Wherefore he prays to be hence dismissed with his costs.

EUGENE B. MYERS,
By JOHN V. LE MOYNE,
His Solicitor.

J. V. LE MOYNE, *Of Counsel.*

Endorsed: Filed May 20, 1881. Wm. H. Bradley, clerk.

124 On the same day, to wit, on the 20th day of May, 1881, came Bernard Callaghan *et al.*, by their solicitor, and filed in said clerk's office their replication to the answer of E. B. Myers in said entitled cause, which said replication is in the words and figures following, to wit:

Replication.

United States Circuit Court, Northern District of Illinois, *ss:* In Chancery.

EUGENE B. MYERS
vs.
BERNARD CALLAGHAN *et al.* } Original Bill.

BERNARD CALLAGHAN *et al.*
vs.
EUGENE B. MYERS. } Cross-Bill.

The replication of Bernard Callaghan *et al.*, complainants in the above cross-bill, to the answer of Eugene B. Myers, defendant, to said cross-bill.

These repliants, saving and reserving to themselves, now and at all times hereafter, all and all manner of benefit and advantage of exception which may be had or taken to the manifold insufficiencies of the said answer of the said defendant, for replication thereunto say that they will aver, maintain, and prove their bill of com-
125 plaint to be true, certain, and sufficient in law to be answered unto, and that the said answer of the said defendant is uncertain, untrue, and insufficient to be replied unto by these repliants, without this, that any other matter or thing whatsoever in the said answer contained material or effectual in the law to be replied unto and not herein and hereby well and sufficiently replied unto, confessed and avoided, traversed or denied, is true; all which matters and things these repliants are ready to aver, maintain, and prove as this honorable court shall direct, and humbly pray as in and by their said bill they have already prayed.

J. L. HIGH,
Solicitor for Compl'ts in Cross-Bill.

J. L. HIGH, *Of Counsel.*

(Endorsed:) Filed May 20, 1881. Wm. H. Bradley, cl'k.

126 Afterwards, to wit, on the fifteenth day of June, in the adjourned May term of said court, 1881, in the record of the proceedings thereof in said entitled cause, before Hon. Thomas Drummond, circuit judge, is the following order, to wit:

Order.

EUGENE B. MYERS
vs.
BERNARD CALLAGHAN *et al.* } In Chancery. Original Bill.

and

BERNARD CALLAGHAN *et al.*
vs.
EUGENE B. MYERS. } Cross-Bill.

Upon motion of counsel for complainants in the above-entitled cross-bill, it is ordered that the same be referred to Henry W. Bishop, Esquire, one of the masters of this court, to take proof thereon and to report the same to the court.

Afterwards, to wit, on the twenty-second day of June, in the adjourned May term of said court, 1881, in the record of the proceedings thereof in said entitled cause, before Hon. Henry W. Blodgett, district judge, is the following entry, to wit:

Order.

EUGENE B. MYERS
vs.
BERNARD CALLAGHAN *et al.* } In Chancery. Original Bill.

127 and

BERNARD CALLAGHAN *et al.*
vs.
EUGENE B. MYERS. } Cross-Bill.

By stipulation of the parties, by their solicitors, this day filed, it is ordered that the answer of defendants to supplemental bill, replication thereto, and the disclaimer of M. D. Ewell and V. B. Denslow be filed, *nunc pro tunc*, as of fifth day of April, A. D. 1881.

128 On the same day, to wit, on the 22nd day of June, 1881, there was filed in said clerk's office a stipulation in said entitled cause, which said stipulation is in the words and figures following, to wit:

Stipulation.

U. S. Cir. C't.

EUGENE B. MYERS
vs.
BERNARD CALLAGHAN *et al.* } In Chancery.

It is stipulated that the answer of def'ts to supplemental bill & replication thereto and disclaimers of Denslow and Ewell may now be filed as of April 5th, 1881, & so endorsed by the clerk.

J. V. LE MOYNE,
For Compl't.
J. L. HIGH,
For Defendants.

Endorsed: Filed June 22, 1881. W. H. Bradley, cl'k.

On the same day, to wit, on the 22nd day of June, 1881, came Bernard Callaghan *et al.*, by their solicitor, and filed in said clerk's office their answer to the supplemental bill in said entitled cause, which said answer is in the words and figures following, to wit:

129 *Answer.*

United States Circuit Court, Northern District of Illinois, *ss:* In Chancery.

EUGENE B. MYERS *vs.* BERNARD CALLAGHAN *et al.*

The joint and several answers of Bernard Callaghan, Andrew Callaghan, Andrew P. Callahan, and Sheldon A. Clark, defendants, to the supplemental bill of complaint of Eugene B. Myers, complainant.

These defendants, saving all benefit of exception to said supplemental bill because of its insufficiencies, for answer thereto or unto so much thereof as they are advised it is material for them to answer, answering, say—

They admit that complainant in and by his original bill charged as in said supplemental bill alleged, and aver that they made full answer thereto, as by their answer remaining on file will more fully appear.

They admit that since the filing of said original bill they have published and sold volumes of Illinois Reports from 39 to 46, in-
130 clusive, except volume 40, but deny that said publication and sale were in violation of complainant's rights, and deny that they threaten to publish said volume 40, and deny that in publishing said volumes they have made any other use of the volumes claimed by complainant than such fair and legitimate use by way of inference, consultation, and otherwise as may be made of any previous publication by a succeeding author or compiler treating of the same subject, and deny that they have copied complainant's arrangement or division of matter other than that the cases reported in defendants' said volumes follow each other in the same order as those in the volumes claimed by complainant, and deny that they have used said volumes claimed by complainant by which to make their books an imitation of or as copies of those claimed by complainant, and deny that their books have been made in imitation of those claimed by complainant.

They deny that they have advertised or sold their said books as the same books as those of complainant, but admit that they
131 have used the name "Freeman's Reports" in their catalogues and circulars, and aver that such use was in accordance with the uniform usage of law publishers in indicating volumes of law reports by the name of the original reporter, and with no intention of announcing defendants' volumes as those of complainant, and aver that, as appears by their catalogues and circulars referred to in said supplemental bill, these defendants, by a full and extensive note immediately following the words "Freeman's Reports," directed

attention to the fact that defendants' volumes were a different revised and re-edited edition, and that they were all re-reported and edited by persons other than the said Freeman, whose names were stated in such note; and these defendants are advised by counsel and believe and so state the fact to be that complainant has no property or right in the name "Freeman's Reports" as so used by them, yet for the purpose of avoiding any apparent conflict with the right claimed by complainant in that regard, as soon as their attention was called thereto by the filing of said supplemental bill, they immediately desisted from such use of the words "Freeman's
132 Reports," and have since sent out no catalogues or circulars using such words, and have corrected their catalogues and circulars by changing the words "Freeman's Reports" to "Illinois Reports;" and they further state that although they had used such words, "Freeman's Reports," in manner above described for several years prior to the filing of said supplemental bill, yet said complainant had never in any way objected thereto prior to the filing such supplemental bill.

They deny that in making their said volumes they have copied either the substance or form from said books claimed by complainant, or that each or any or either of their said books are imitations of or piracies upon the volumes of corresponding number claimed by complainant.

They admit that in making their said books they have taken the opinions of the court from the volumes as reported by Mr. Freeman, but state that in all cases they have carefully compared each of said opinions with the original opinions of the supreme court of Illinois on file or recorded in the respective cases, and have made frequent and constant corrections therein to correspond with
133 such originals, such opinions as so reported by said Freeman abounding in mistakes, errors, and variations from the originals, and, except as aforesaid, they deny that they have used said books claimed by complainant or that they have not resorted to the records of the supreme court, as averred in said supplemental bill, and, except as to such opinions, deny that they have taken any matter from the books claimed by complainant, and deny that they have used or copied from his said books considerable or any portion of the original matter furnished by said Freeman, either by copying exactly or by making colorable changes or in any other manner whatever, and, on the contrary, they aver that, except as to the use of the opinions as aforesaid, the remaining matter in defendants' volumes was obtained from the original records of the supreme court of Illinois, at Springfield, Mt. Vernon, and Ottawa, and was arranged, reported, compiled, and edited wholly by the original labor of the editors employed by defendants for that purpose, and whose names appear as such editors and reporters upon the title page and cover of each of defendants' said volumes.

134 They have no knowledge as to whether complainant advertised said books, as averred by him, and therefore neither admit nor deny the same, but leave him to his proof thereof.

They deny that the decisions of the supreme court were ever divided by complainant into volumes, as by him alleged, or that any classification thereof was ever made by complainant, as alleged, or that such decisions had become known by reason of anything done by said complainant, or that complainant has any property in any such division, as alleged, or that any such alleged division was or is covered or protected by the alleged copyright of said complainant, or that defendants have used any such arrangement except as hereinbefore stated, or that they have used the title or name of said books claimed by complainant, but, on the contrary, they aver that the titles of their volumes are so different from those claimed by complainant that they cannot be mistaken therefor even by a casual purchaser or observer, and they deny that they have caused any damage to complainant, as by him averred.

They deny that their said books were made to supersede or
135 take the place of the books claimed by complainant or that they are being sold in violation of complainant's rights, as by him averred.

And these defendants aver that their volumes are new and original productions, with new and original tables of cases, head-notes, statements of facts, abstracts of briefs of counsel, corrected opinions, foot-notes, and indexes, and in no manner copies of or infringements upon the volumes claimed by complainant.

And these defendants aver and insist that complainant has not and cannot have under the act of Congress concerning copyrights or otherwise any copyright or property or exclusive right in and to the opinions of the court as published or to their arrangement or division or to the titles of said volumes, as in and by his said supplemental bill is claimed; and they pray like benefit hereof upon the hearing as they would have been entitled to by way of demurrer to said supplemental bill of complaint.

All which matters defendants are ready to aver, maintain, and prove as this court may direct, and pray to be hence dis-
136 missed, with their reasonable costs in this behalf sustained.

J. L. HIGH,
Solicitor and of Counsel for said Defendants.

Endorsed: Filed the 22nd day of June, A. D. 1881. W. H. Bradley, clerk.

On the same day, to wit, on the 22nd day of June, 1881, came M. D. Ewell and V. V. Denslow, by their solicitor, and filed in
137 said clerk's office their disclaimer in said entitled cause, which said disclaimer is in the words and figures following, to wit:

Disclaimer of M. D. Ewell and V. B. Denslow to the Supplemental Bill of Complaint.

United States Circuit Court, Northern District of Illinois, *ss:* In Chancery.

EUGENE B. MYERS

vs.

BERNARD CALLAGHAN, ANDREW CALLAGHAN, ANDREW P. CALLAGHAN, Sheldon A. Clark, Marshall D. Ewell, and V. B. Denslow.

The joint and separate answers of Marshall D. Ewell and V. B. Denslow, two of the defendants in the above-entitled cause, to the supplemental bill of complaint of said complainant.

These defendants, saving and reserving all benefit of exception to said supplemental bill of complaint because of its manifold errors and inconsistencies, for answer thereto, or unto so much
138 thereof as they are advised it is material for them to answer, answering, say—

That they disclaim all manner of right, title, and interest whatsoever in and to the alleged publication by the firm of Callaghan and Company of certain volumes of Illinois Reports in said supplemental bill named and in and to each and all of said volumes, and as to other the matters and things in said supplemental bill and every part thereof, without this, that any other matter or thing in said supplemental bill contained material or necessary for these defendants to make answer unto, and not herein well and sufficiently answered unto, confessed or avoided, traversed or denied, is true; all which matters and things these defendants are ready to aver, maintain, and prove as this honorable court shall direct, and humbly pray to be hence dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

MARSHALL D. EWELL AND
V. B. DENSLOW,
By J. L. HIGH, *Solicitor.*

J. L. HIGH, *Of Counsel.*

(Endorsed:) Filed June 22, 1881, *nunc pro tunc* as of April 5, 1881. W. H. Bradley, cl'k.

139 On the same day, to wit, on the 22d day of June, 1881, came E. B. Myers, by his solicitor, and filed in said clerk's office his replication to the answer — Bernard Callaghan *et al.* in said entitled cause, which said replication is in the words and figures following, to wit:

Replication.

UNITED STATES OF AMERICA, *Northern District of Illinois:*

Circuit Court of the United States, Northern District of Illinois. In Chancery.

EUGENE B. MYERS *vs.* BERNARD CALLAGHAN *et al.*

The replication of Eugene B. Myers, complainant, to the answer of Bernard Callaghan, Andrew Callaghan, Andrew P. Callaghan, and Sheldon A. Clark, defendants, to the supplemental bill of said complainant.

This repliant, saving and reserving unto himself all and all manner of advantage of exception to the manifold insufficiencies of the said answer, for replication thereunto, saith that he will aver,
140 maintain, and prove his said bill to be true, certain, and sufficient in law to be answered unto, and that the said answer of the said defendant- is uncertain, untrue, and insufficient to be replied unto by this repliant, without this, that any other matter or thing whatsoever in the said answer contained material or effectual in the law to be replied to, confessed and avoided, traversed or denied, is true; all which matters and things this repliant is and will be ready to aver and prove as this honorable court shall direct, and humbly prays as in and by his said bill he has already prayed.

J. V. LE MOYNE,
Solicitor for Compl't.

Endorsed: Filed June 22, 1881, *nunc pro tunc* as of April 5, 1881. Wm. H. Bradley, cl'k.

Afterwards, to wit, on the seventeenth day of April, 1882, came Henry W. Bishop, one of the masters in chancery of said court, and filed in said clerk's office his report in said entitled cause, which said report is in the words and figures following, to wit:

141 *Master's Report.*

Circuit Court of the United States, Northern District of Illinois.

EUGENE B. MYERS *vs.* BERNARD CALLAGHAN *et al.*

To the Hon. Thomas Drummond, judge of the circuit court of the United States:

Upon a reference of this cause for the purpose of ascertaining and reporting—

First. What number of each of the volumes referred to in said order have been printed.

Second. What number have been sold.

Third. At what price by the defendants.

Fourth. The market value of each of said books prior to such publication by the defendants.

Fifth. The actual cost or value of reprinting and binding each of said volumes—

I have been attended by the respective counsel, who have produced before me witnesses, whose testimony has been taken and, with the exhibits attached thereto, is herewith reported. I have heard the arguments of counsel upon the facts and the law presented in this case; upon consideration of which I find and report—

142 First. That the defendants have printed of the volumes referred to, commencing with vol. 32 of the Illinois Reports and extending to vol. 38, inclusive, the total number of 4,313.

Second. That the defendant- have sold of the same a total of 2,909. In regard to these two items there is no dispute. I find that the sales made by the defendants were as follows:

Of vol. 32	$1,990 91
Vol. 33	1,971 73
Vol. 34	1,884 24
Vol. 35	1,945 09
Vol. 36	1,933 47
Vol. 37	1,878 68
Vol. 38	1,847 07
Making a total of	$13,451 19

Being an average of $4.62½ per volume.

I have arrived at these results on the testimony of the defendants themselves and such persons in their employment as have been examined as witnesses and who are shown to have had charge of this department of defendants' business and of the sales themselves. It is insisted upon the part of the complainant that the average price per volume realized by the defendants was much in excess of the sum herewith reported, being an average of $5.90½ per volume. This conclusion is reached by them by taking individual instances of sales and calculating that ⅛ at least was sold at the retail

143 price of $7.50 and that ⅞ were sold at wholesale or in sets; but there is not testimony in the case showing that sales were made in such porportions, nor does it appear, except in one or two instances, that any of the volumes were sold as high as $7.50, and this latter fact is not definitely established. I am, therefore, unable to apply the methods which have been presented to me and insisted upon by the complainants in determining the amount realized by the defendants from the sales of these publications, and there is not evidence, in my estimation, before me which justifies any other conclusion than the one reached, which is based entirely upon actual sales as shown by the testimony to have been made.

As to the market value of the volumes before publication by the defendants no testimony has been offered, and I therefore make no report upon this item of the reference.

In regard to the actual cost of reprinting each of said volumes there appears to be no dispute in respect to most of the items that are employed in determining this question. It is insisted upon the part of the complainants that the amount claimed for cost of binding is in excess of the price shown to have been charged for like work during the periods covered by the account, but the sums reported are shown by the testimony to have been the amounts actually
144 paid by the defendants for this work, and all of the testimony (which it is claimed tends to show that these sums were too large) is somewhat indefinite and in many respects unsatisfactory, and I do not feel at liberty to use the prices mentioned in the testimony as against the actual payments made by the defendants themselves in the natural course of their business.

I have, in estimating the cost, not included the item of proof-reading or the item of expense account, which, it is contended by the defendants, should be included as proper and necessary in stating their accounts. Upon the basis of this conclusion and excluding the charge of stereotyping, I find the cost of reprinting and binding each of said volumes was as follows:

Vol. 32	$942 88
Vol. 33	782 35
Vol. 34	664 13
Vol. 35	843 50
Vol. 36	835 97
Vol. 37	773 18
Vol. 38	885 78
Making a total cost or value of reprinting and binding said volumes of	$5,737 79

I do not understand that the expense of selling, or what is mentioned in the statement of the defendants as the expense account, is included in this reference. I have, therefore, excluded that as an item in stating the account, but the testimony on this point is reported with the other testimony.

Respectfully submitted, HENRY W. BISHOP,
Master in Ch'y.

Endorsed: Filed Apr. 17, 1882. W. H. Bradley, clerk. Miss Tucker. 48 fol. Myers *vs.* Callaghan. Am't, 10.

145 Afterwards, to wit, on the fifteenth day of May, 1882, came the defendants, by their solicitor, and filed in said clerk's office their exceptions to the report of the master in said entitled cause, which said exceptions are in the words and figures following, to wit:

146 *Exceptions to Report.*

Circuit Court United States, Northern District of Illinois, *ss:* In Chancery.

EUGENE B. MYERS *vs.* BERNARD CALLAGHAN *et al.*

Exceptions taken by the above-named defendants to the report of Henry W. Bishop, Esquire, one of the masters in chancery of this court, filed herein on the 17th day of April, 1882, to whom this cause was referred by an order made herein on the 10th day of February, 1882, to take proof upon the matters in said order specified.

Now come the above-named defendants and except to the said report of said master, and show here to the court the following grounds of exception thereto:

First. For that the said master in estimating the cost of said volumes 32 to 38, inclusive, of the Illinois Reports has not included or allowed to defendants the amounts paid by them for proof-reading and editorial work of said volumes.

147 Second. For that the said master in estimating the cost of said volumes has not included or allowed to defendants the amount paid by them for stereotyping said volumes.

And the said defendants, understanding, as stated by the master in his said report, that the expense of selling said volumes, or what is shown as the expense account in the evidence adduced by the defendants before said master, is not included in said order of reference, make no exception to the report of the master in that regard, but reserve the same for further hearing before the court.

J. L. HIGH,
Solicitor for Defendants.

Endorsed: Filed the 15th day of May, A. D. 1882. W. H. Bradley, clerk.

148 Afterwards, to wit, on the twenty-third day of June, in the adjourned May term of said court, 1882, in the record of the proceedings thereof in said entitled cause, before Hon. Thomas Drummond, circuit judge, is the following entry, to wit:

Order.

EUGENE B. MYERS
vs.
BERNARD CALLAGHAN *et al.* } In Chancery.

This cause now coming on to be heard upon the report of Henry W. Bishop, master in chancery, and the exceptions thereto filed by the defendants, and as it does not appear to the court what is the total amount of the damages the plaintiff has sustained in conse-

quence of the illegal publication and sale by defendants of the volumes of Illinois reports number- 32 to 38, both inclusive, it is ordered that said cause be again referred to said Henry W. Bishop, master in chancery, to ascertain and report, on evidence heretofore given and such other evidence as the parties may give before him, the total amount of the damages sustained by the plaintiff in consequence of such illegal publication and sale, and that the further hearing on the exceptions already filed stand over until the coming in of the report of the master as to the matters hereby referred.

149 Afterwards, to wit, on the second day of January, 1883, came E. B. Myers, the complainant, by his solicitor, and filed in said clerk's office his petition in said entitled cause, which said petition is in the words and figures following, to wit:

150 *Petition for Leave to Amend Supplemental Bill.*

United States Circuit Court, Northern District of Illinois. In Chancery.

EUGENE B. MYERS
vs.
BERNARD CALLAGHAN *et al.* } Bill.

EUGENE B. MYERS
vs.
BERNARD CALLAGHAN *et al.* } Supplemental Bill.

To the Honorable Thomas Drummond, judge of said court:

The petition of Eugene B. Myers, plaintiff, respectfully represents unto your honor that on February 14th, 1881, he filed a supplemental bill in the above-entitled cause; that the defendant answered the plaintiff's said bill, and that the petitioner filed his replication thereto, and that testimony had been taken on part of plaintiffs and defendants; that since the taking of said testimony your petitioner has been advised by his counsel and believes that it is essential to his rights in this cause that the said supplemental bill be amended as shown by the amended supplemental bill herewith presented.

151 Your petitioner further represents that volume 40, Illinois Reports, was excepted from the said supplemental bill in consequence of information received from the defendants themselves that they had not infringed his copyright of said volume and had not printed, published, or sold the same.

Your petitioner further represents that since the taking of said testimony and within the past few days he has been informed and believes that the information received from said defendant as aforesaid was not true, and that they did infringe his copyright and did reprint & publish the said volume 40, Illinois Reports, and that until within the time aforesaid he had no knowledge of such reprinting & publication.

Your petitioner, therefore, prays that he may be at liberty to

amend his said supplemental bill by striking out therefrom the words "except volume number 40" whereever they occur in said supplemental bill.

EUGENE B. MYERS.

NORTHERN DISTRICT OF ILLINOIS, *ss:*

Eugene B. Myers, being duly sworn, says that the foregoing petition by him subscribed is true.

EUGENE B. MYERS.

Subscribed and sworn to before me this second day of January, A. D. 1883.

[NOTARIAL SEAL.] DAVID M. HILLIS,
Notary Public.

152 United States Circuit Court, Northern District of Illinois. In Chancery.

EUGENE B. MYERS
vs.
BERNARD CALLAGHAN *et al.* } Bill.

EUGENE B. MYERS
vs.
BERNARD CALLAGHAN *et al.* } Supplemental Bill.

Amendment to the supplemental bill of complaint in the above-entitled cause, made pursuant to an order of the court entered on the — day of January, A. D. 1883.

First. Strike out the words and figures "except volume number 40," in the second paragraph of said supplemental bill, filed herein February 14th, 1881, and wherever else said words may occur in said supplemental bill.

Wherefore plaintiff prays as in said supplemental bill he has already prayed.

EUGENE B. MYERS.

GEO. W. COTHRAN,
Plaintiff's Solicitor.

NORTHERN DISTRICT OF ILLINOIS, *ss:*

Eugene B. Myers, the plaintiff, being duly sworn, says the foregoing amendment to said supplemental bill is true.

EUGENE B. MYERS.

Subscribed and sworn to before me this second day of January, A. D. 1883.

153 [NOTARIAL SEAL.] DAVID M. HILLIS,
Notary Public.

(Endorsed:) Filed Jan. 2, 1883. W. H. Bradley, clerk.

154 Afterwards, to wit, on the third day of January, 1883, in the December term of said court, 1882, in the record of the proceedings thereof in said entitled cause, before Hon. Thomas Drummond, circuit judge, is the following entry, to wit:

Order.

EUGENE B. MYERS
vs.
BERNARD CALLAGHAN *et al.* } In Chancery.

This cause now coming on to be heard upon the petition of the plaintiff for leave to amend his supplemental bill, and the court being fully advised in the premises, it is ordered that the plaintiff have leave to file an amended supplemental bill or an amendment to his supplemental bill, so as to include volume 40, Illinois Reports, within ten days, and that the defendants plead to said amended supplemental bill within fifteen days therefrom; but this order is made without prejudice to any proceedings already had and taken on said supplemental bill, and that the testimony already taken thereunder shall apply to the supplemental bill as thus amended so far as applicable.

Afterwards, to wit, on the fifth day of January, 1883, came the complainant, by his solicitor, and filed in said clerk's office his amended supplemental bill in said entitled cause, which said
155 amended supplemental bill is in the words and figures following, to wit:

Amendment to Supplemental Bill.

United States Circuit Court, Northern District of Illinois. In Chancery.

EUGENE B. MYERS
vs.
BERNARD CALLAGHAN *et al.* } Bill.

EUGENE B. MYERS
vs.
BERNARD CALLAGHAN *et al.* } Supplemental bill.

Amendment to the supplemental bill of complaint in the above-entitled cause, made pursuant to an order of the court entered on the 3d day of January, A. D. 1883.

First. Strike out the words and figures "except volume number 40," in the second paragraph of said supplemental bill, filed herein Feb'y 14th, 1881, and wherever else said words may occur in said supplemental bill.

Wherefore plaintiff prays as in said supplemental bill he has already prayed.

EUGENE B. MYERS.

GEO. W. COTHRAN,
Plaintiff's Solicitor.

NORTHERN DISTRICT OF ILLINOIS, *ss:*

156 Eugene B. Myers, the plaintiff, being duly sworn, says the foregoing amendment to said supplemental bill is true.

EUGENE B. MYERS.

Subscribed & sworn to before me this fifth day of Jan'y, A. D. 1883.

[SEAL.] DAVID M. HILLIS,
Notary Public.

Endorsed: Filed Jan. 15, 1883. W. H. Bradley, cl'k.

Afterwards, to wit, on the eighteenth day of January, 1883, came the defendants, by their solicitor, and filed in said clerk's office their answer to the amended supplemental bill in said entitled cause, which said answer is in the word and figures following, to wit:

157 *Answer.*

United States Circuit Court, Northern District of Illinois, *ss:* In Chancery.

EUGENE B. MYERS *vs.* BERNARD CALLAGHAN *et al.*

The answer of the above-named defendants to the amendment to the supplemental bill of complaint of the above-named complainant.

These defendants, for answer unto so much of said supplemental bill of complaint as amended as pertains to volume forty of Illinois Reports, answering, says that they deny each and all of the allegations thereof, and pray to be hence dismissed, with their reasonable costs in this behalf sustained.

J. L. HIGH,
Solicitor for Defendants.

J. L. HIGH, *Of Counsel.*

Endorsed: Filed the 18th day of January, A. D. 1883. Wm. H. Bradley, clerk.

158 Afterwards, to wit, on the thirtieth day of January, 1883, came the complainant, by his solicitor, and filed in said clerk's office his replication to the answer in said entitled cause, which said replication is in the words and figures following, to wit:

159 *Replication.*

United States Circuit Court, Northern District of Illinois.

EUGENE B. MYERS *vs.* BERNARD CALLAGHAN *et al.*

The replication of Eugene B. Myers, plaintiff, to the answer of the above-named defendants to the amended supplemental bill.

This repliant, saving and reserving unto himself all and all manner of advantage of exception to the manifold iusufficiencies of the

said answer, for replication thereunto, says that he will aver and prove his said bill to be true, certain, and sufficient in the law to be answered unto, and that the said answer of the defendant is uncertain, untrue, and insufficient to be replied unto by this repliant, without this, that any other matter or thing whatsoever in the said answer contained material or effectual in law to be replied unto, confessed and avoided, traversed or denied, is true; all which matters and things this repliant is and will be ready to aver and
160 prove as this honorable court shall direct, and humbly prays as in and by his said bill he has already prayed.

GEO. W. COTHRAN,
Sol. for Plaintiff.

Endorsed: Filed Jan. 30, 1883. W. H. Bradley, cl'k.

161 Afterwards, to wit, on the sixth day of March, in the adjourned March term of said court, 1883, in the record of the proceedings thereof in said entitled cause, before Hon. Thomas Drummond, circuit judge, is the following entry, to wit:

Order.

EUGENE B. MYERS
vs.
BERNARD CALLAGHAN *et al.* } In Chancery.

This cause now coming on to be heard upon the amended supplemental bill, the answer, and replication thereto, and the court being fully advised in the premises, it is ordered that the issues joined under said supplemental bill, so far as they relate to volume 40, Illinois Reports, be, and are hereby, referred to Henry W. Bishop, master in chancery, to take proofs and report the same to this court.

Afterwards, to wit, on the seventh day of December, 1883, Judge Drummond delivered the following opinion in said entitled cause:

162 *Opinion of the Court.*

In the Circuit Court of the United States for the Northern District of Illinois. Friday, December 7, 1883.

EUGENE B. MYERS *vs.* BERNARD CALLAHAN *et al.*

DRUMMOND, *J.:*

The views of the court upon one part of this case are to be found in 10 Biss., 139, 5 Fed. Rep., 726. The present inquiry is limited to what is alleged to be an infringement by the defendants of volumes 39 to 46, inclusive, of Mr. Freeman's Illinois Reports. Volume 40 seems never to have been regularly published like the other volumes, although the evidence of the infringement of the plaintiff's copyright in that volume is perhaps stronger than that applicable to any other of the volumes named. Upon comparing parts of each of the vol-

umes, those of the complainant and those of the defendants, one with the other, I think there can be no doubt that in some respects in each case the Freeman volume has been used by the defendants in the head-notes, the statement of facts, and the arguments of coun-
163 sel—that is, there are certain unmistakable *indicia* that in every volume prepared by the defendants they have not confined themselves solely to the original sources of information, namely, the opinion of the judges, the records, and the arguments of counsel; but while this is technically true, it is only true to a limited extent. The great bulk of what may be termed copyright matter in each volume of the defendants seems to be made up independent of the corresponding volume of the plaintiff, and in very many instances where a similarity can clearly be traced and the use of the materials of the plaintiff's volumes distinctly made out the similarity is trivial and unimportant, and I should feel extremely reluctant to hold worked a forfeiture of the whole edition. It would seem to me, while holding there is technically an infringement of the copyright of the plaintiff, the fairest view to take of the whole subject would be to require what might be termed a small royalty, such as the defendants could afford, to be paid to the plaintiff for the sale of the volumes named.

The fact appears to be, and indeed it is not a subject of controversy, that in arranging the order of cases and in the paging of the different volumes the Freeman edition has been followed by the defendants; but, while this is so, I should not feel inclined
164 merely on that account and independent of other matters to give a decree to the plaintiff, although it is claimed that the arrangement of the cases and the paging of the volumes are protected by a copyright. Undoubtedly, in some cases, where are involved labor, talent, judgment, the classification and disposition of subjects in a book entitle it to a copyright; but the arrangement of law cases and the paging of the book may depend simply on the will of the printer, of the reporter, or publisher, or the order in which the cases had been decided, or upon other accidental circumstances. Here the object on the part of the defendants seems to have been that there should not be confusion in the references and examination of cases; but the arrangement of cases and the paging of the volumes is a labor inconsiderable in itself, and I regard it, not as an independent matter, but in connection with other similarities existing between the two editions when I say, taking the whole together, the Freeman volumes have been used in editing and publishing the defendants' volumes. It should be borne in mind that, as a general thing, there is but a small part of the report of a case which is the subject of copyright. Many of the cases contain nothing but the opinions of the court, with the simple remark that the facts are stated in the opinion, and the head-notes are nothing more
165 than a repetition, in a condensed form, of what is in the opinion, and therefore it is often very difficult to select distinct points of comparison between the same case in the corresponding volumes of the parties, because there is so little which can be called the work of the reporter.

Afterwards, to wit, on the second day of February, 1884, came Henry W. Bishop, one of the masters in chancery of said court, and filed in said clerk's office his report in said entitled cause, which said report is in the words and figures following, to wit:

166 *Master's Report.*

Circuit Court of the United States, Northern District of Illinois.

EUGENE B. MYERS *vs.* BERNARD CALLAGHAN *et al.*

To the Honorable Thomas Drummond, judge, &c.:

An order was entered in this cause on the 23d day of June, 1882, again referring the same to me for the purpose of ascertaining and reporting on the evidence heretofore given and such other evidence as the parties might give before me the total amount of damages sustained by the plaintiff in consequence of the illegal publication and sale of the volumes of the Illinois Reports mentioned therein and numbered 32 to 38, both inclusive. Upon this reference I have been again attended by the parties, who have submitted to me for my further examination the testimony which has already been taken in this cause and which was used by me in the preparation of my former report, and in addition the testimony of other witnesses has been taken, all of which testimony is herewith reported. As to the actual selling price of volumes 32 to 38, inclusive, no new evidence
167 has been presented to me upon this hearing tending to change the conclusions in my former report in respect to this question, although there is some new testimony relating to a period prior to the republication complained of. For this reason I do not think I am justified in changing these conclusions before reported by me upon this branch of the record, which conclusion was based upon actual sales extending over a period of four years, resulting in a market price amounting to $4.62½ per volume. There has been no testimony taken upon this re-reference which affects the actual cost of printing each of said volumes stated in my former report, except as to the single item of 12⅞ per cent. which is claimed, and is, in my opinion, shown by the testimony to have been a legitimate item of expense in the conduct of the business of the defendants in the course of these publications, and it is insisted by them that such item should be applied as a credit in that account, and believing that such credit should apply to this department of defendants' business as well as any other in now stating the account I have made use of it for such purpose. I have disallowed the charge made for stereotyping, which, it is claimed by the defendants, should be allowed, and I have also not taken into consideration the question of salaries, which
168 has been sought to be introduced as a legitimate subject of credit.

Testimony has been introduced tending to show the cost of publication prior to the time referred to and the prices at which volumes of the report were sold during such period, but I have not deemed this testimony as useful or proper in ascertaining the ques-

tion that has been referred to me and only pertinent to the other question, which, I understand, is not included in this reference.

Upon the basis, therefore, of these conclusions I again find that the defendants have printed of volumes referred to, commencing with vol. 32 of the Illinois Reports and extending to volume 38, inclusive, a total number of 4,313, and that the defendants have sold of the same a total number of 2,909 copies. In regard to these two items there is no dispute. I again find that the sales made by the defendant- were as follows:

Of vol. 32	$1,990 91
Vol. 33	1,971 73
Vol. 34	1,884 24
Vol. 35	1,945 09
Vol. 36	1,933 47
Vol. 37	1,878 68
Vol. 38	1,847 07
Making a total of	$13,451 19

Being an average of $4.62½ per volume.

I find upon the basis of the conclusions stated, excluding
169 the charge for stereotyping, counsel fees, editorial work, and proof-reading, and including 12½ per cent. as legitimate expenses, the cost of reprinting and binding each of said volumes as follows:

Vol. 32	$1,064 25
Vol. 33	883 06
Vol. 34	749 63
Vol. 35	952 10
Vol. 36	943 59
Vol. 37	872 70
Vol. 38	999 81
Making the total cost of reprinting, binding, and disposal of said volumes	$6,465 14

Which, being deducted from the amount now reported, $13,451.19, leaves a balance of $6,986.05, which I now report are the damages sustained by the complainant by reason of such illegal sale and publication, and for which I reccommened that a decree be entered. This amount, it is claimed by complainant's counsel, should be reduced to the extent of $896.19, if the cost of composition and presswork is rateably distributed over the whole edition. I find, further, that the market value of said books prior to the alleged illegal publication was $7.17 per volume, as shown by sales of books then out of print. It is contended, however, upon the part of the complainant that the average of $4.62½ per volume, which I have ascertained from the testimony furnished by the de-
170 fendants in the statement exhibited by them is not the correct amount, and that the evidence upon which this finding

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167 has been presented to me upon this hearing tending to change the conclusions in my former report in respect to this question, although there is some new testimony relating to a period prior to the republication complained of. For this reason I do not think I am justified in changing these conclusions before reported by me upon this branch of the record, which conclusion was based upon actual sales extending over a period of four years, resulting in a market price amounting to $4.62½ per volume. There has been no testimony taken upon this re-reference which affects the actual cost of printing each of said volumes stated in my former report, except as to the single item of 12⅞ per cent. which is claimed, and is, in my opinion, shown by the testimony to have been a legitimate item of expense in the conduct of the business of the defendant in the course of these publications, and it is insisted by them that this item should be applied as a credit in that account, and believing that such credit should apply to this department of defendants' business as well as any other in now stating the account I have made use of it for such purpose. I have disallowed the charge made for stereotyping, which, it is claimed by the defendants, should be allowed, and I have also not taken into consideration the question of salaries, which
168 has been sought to be introduced as a legitimate subject of credit.

Testimony has been introduced tending to show the cost of publication prior to the time referred to and the prices at which volumes of the report were sold during such period, but I have not deemed this testimony as useful or proper in ascertaining the ques-

tion that has been referred to me and only pertinent to the other question, which, I understand, is not included in this reference.

Upon the basis, therefore, of these conclusions I again find that the defendants have printed of volumes referred to, commencing with vol. 32 of the Illinois Reports and extending to volume 38, inclusive, a total number of 4,313, and that the defendants have sold of the same a total number of 2,909 copies. In regard to these two items there is no dispute. I again find that the sales made by the defendant- were as follows:

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Making a total of	$13,451 19

Being an average of $4.62½ per volume.

I find upon the basis of the conclusions stated, excluding
169 the charge for stereotyping, counsel fees, editorial work, and proof-reading, and including 12½ per cent. as legitimate expenses, the cost of reprinting and binding each of said volumes as follows:

Vol. 32	$1,064 25
Vol. 33	883 06
Vol. 34	749 63
Vol. 35	952 10
Vol. 36	943 59
Vol. 37	872 70
Vol. 38	999 81
Making the total cost of reprinting, binding, and disposal of said volumes	$6,465 14

Which, being deducted from the amount now reported, $13,451.19, leaves a balance of $6,986.05, which I now report are the damages sustained by the complainant by reason of such illegal sale and publication, and for which I reccommened that a decree be entered. This amount, it is claimed by complainant's counsel, should be reduced to the extent of $896.19, if the cost of composition and press-work is rateably distributed over the whole edition. I find, further, that the market value of said books prior to the alleged illegal publication was $7.17 per volume, as shown by sales of books then out of print. It is contended, however, upon the part of the complainant that the average of $4.62½ per volume, which I have ascertained from the testimony furnished by the de-
170 fendants in the statement exhibited by them is not the correct amount, and that the evidence upon which this finding

is made is not the best evidence by which the price at which the defendant- sold the books could be exhibited, and it is insisted that the evidence of Charles A. Bartlett and George M. Beckwith establishes the selling price at $7.50 per volume after proper deductions are made. I have, however, employed these total receipts in making up the account for the reason that they represent all the sales from which the average price per volume could be made, while the other sales upon the basis of which the larger sum is claimed represent the very much smaller amount of sales and are not shown to have been made in the regular course of business. If, however, the court should be of the opinion that the weight of testimony is in favor of the selling price at $6.75 per volume, as contended by complainant's counsel, then, upon the basis of sales amounting to 2,909 copies, the aggregate amount would be $19,635.75, from which, after deducting the cost of reprinting, binding, and 12⅞ per cent. as expenses of selling, which the complainant insists are the proper deductions, the profits would amount to the sum of $14,599.55.

Upon an exhibition of the draft of my report to the respective counsel, showing a finding upon a basis of $4.62½ per volume,
171 I have, at the request of complainant's counsel, presented to the court the alternative result herein stated.

I return herewith the testimony and exhibits used by me in the preparation of this report.

All of which is respectfully submitted.

HENRY W. BISHOP,
Master in Ch'y.

(Endorsed:) Filed Feb'y 2, 1884. Wm. H. Bradley, clerk.

Afterwards, to wit, on the thirteenth day of February, 1884, came the defendants, by their solicitor, and filed in said clerk's office their exceptions to the master's report in said entitled cause, which said exceptions are in the words and figures following, to wit:

172 *Exceptions to Master's Report.*

UNITED STATES OF AMERICA, } ss:
Northern District of Illinois, }

In the Circuit Court of the United States. In Chancery.

EUGENE B. MYERS *vs.* BERNARD CALLAGHAN *et al.*

Now come the defendants, Bernard Callaghan, Andrew Callaghan, Andrew P. Callahan, and Sheldon A. Clark, by James L. High, their solicitor, and except to the report of Henry W. Bishop, Esquire, one of the masters of this court, filed herein on the second day of February, instant, concerning the damages sustained by complainant by reason of the publication and sale by defendants of volumes thirty-two to thirty-eight, inclusive, of the Illinois Reports, and show here to the court the following grounds of exception to said report:

First. For that the said master in estimating the cost of producing said volumes by the defendants has refused to allow the defendants credit for the cost of stereotyping each of said volumes, as
173 shown by the testimony.

Second. For that the said master in estimating the expenses of conducting the business of said defendants during the period in controversy has refused to allow, as a part of such expenses, the salaries shown by the testimony to have been paid to said defendants for their services in and about their business during the period in controversy, the same amounting to about the sum of twelve thousand dollars annually during such period, which has been wholly disallowed by said master.

Third. For that the said master has only allowed defendants credit for the sum of twelve and seven-eighths per cent. of their gross sales as expenses incurred in effecting such sales, and has refused to allow as a part of such expenses the salaries so paid said defendants, as in the second exception above stated, whereas said master should have allowed defendants credit on account of such expenses for such additional percentage over and above twelve and seven-eighths per cent. as the amount of such annual salaries as aforesaid bears to the gross annual sales during the period in
174 question.

Wherefore these defendants except to said report and pray the judgment of the court thereon.

J. L. HIGH,
Solicitor and of Counsel for said Defendants.

Endorsed: Filed the 13th day of February, A. D. 1884. Wm. H. Bradley, clerk.

Afterwards, to wit, on the first day of March, 1884, came the complainant, by his solicitor, and filed in said clerk's office his exceptions to the report of the master in said entitled cause, which said exceptions are in the words and figures following, to wit:

175 *Plaintiff's Exceptions & Master's Report.*

United States Circuit Court, Northern District of Illinois.

EUGENE B. MYERS *vs.* BERNARD CALLAGHAN *et al.*

Exceptions to the master's report, filed herein on February 2nd, 1884, on behalf of the plaintiff in the above cause.

1. And the plaintiff in said cause excepts to so much of said report as reads: "As to the actual selling price of volumes 32 to 38, inclusive, no new evidence has been presented to me upon this hearing tending to change the conclusions in my former report in respect to this question, although there is some new testimony relating to a period prior to the republication complained of. For this reason I do not think I am justified in changing these conclusions before reported by me upon this branch of the case, which conclusion was

based upon actual sales extending over a period of four years, resulting in a market price amounting to $4.62½ per volume," for the reasons that such findings are not in accordance with the evidence, but directly contrary to the evidence, as each party introduced considerable evidence on such hearing on the question of
176 the selling price of said volumes before and at the time the defendants' reprints came into the market, and which established a selling price of not less than $7.17 per volume. Furthermore, there is not a particle of evidence in the case of any sales of plaintiff's books by any person upon which the finding of the master can be based.

2. And plaintiff excepts to so much of said report, and asks to have it stricken out, as reads: "Testimony has been introduced tending to show the cost of publication prior to the time referred to and the prices at which volumes of the report were sold during such period, but I have not deemed this testimony as useful or proper in ascertaining the question that has been referred to me, and only pertinent to the other question, which, I understand, is not included in this reference," on the ground that the master has misconceived his duty, as the original order of reference expressly required him to report the selling price of plaintiff's books at the time when defendants' books came into the market; and, furthermore, the greater part of the testimony taken on the re-reference related to such selling price; and the court, during the hearing on a question certified by the master to the court, compelled the plaintiff to furnish a statement from his books of sales actually made by him; and
177 the defendants also on such hearing furnished a list of sales claimed to have been made by them for a period of from one to three years before and at the time such reprints came into the market.

3. And he excepts to so much of said report as finds "That the sales made by the defendants were as follows:

Vol. 32	$1,990 31
Vol. 33	1,971 73
Vol. 34	1,884 34
Vol. 35	1,945 09
Vol. 36	1,933 68
Vol. 37	1,878 08
Vol. 38	1,847 07
Making a total of	$13,450 19

Being an average of $4.62½ per volume," for the reason that there is not any evidence in the case of any sales of any copy or copies of either of said volumes, or of all sales of copies of either or all of said volumes, from or upon which the results stated by the master can be arrived at; and, furthermore, the only evidence in the case of the sale or sales of any of said volumes is that they were generally sold in sets of Illinois Reports, and that defendants' selling price to the trade was $7.50 per volume, with a discount off of from 10 to 20 per cent.; and plaintiff insists that the master should have

found upon the evidence in the case that defendants sold all of said volumes at $7.50 per copy, with a discount of not to
178 exceed 10 per cent. The master's conclusion is based upon a statement furnished by the defendants, which does not purport to state the selling price of any of said books, nor to show what said books were sold for; on the contrary, it only purports to show receipts, and not selling prices.

4. And the plaintiff also excepts to so much of said report as charges to the plaintiff and credits to the defendants, as an item of expense, and which the master deducted from the amount he found was received by the defendants on sales of said books, the entire cost of composition and press-work, because such finding is both unjust and inequitable; that the entire cost of composition and press-work should be charged as against the volumes sold, and he insists that such cost should have been distributed rateable over the whole edition of each volume printed, so that the volumes in an unbound condition would cost just the same price, and plaintiff insists that the credits allowed to defendants should be diminished by the sum of $896.19, and that sum added to the amount found due to the plaintiff, and that the alternative of the report, in that respect, should be adopted.

5. And plaintiff also excepts to so much of said report as reads: "I find, further, that the market value of said books, prior to the alleged illegal publication, was $7.17 per volume, as shown
179 by the sales of the books then out of print;" that part of said finding, as shown by the sales of the books then out of print, is not based upon any testimony in the case, but is contrary to the testimony, as several of the volumes were stereotyped by the plaintiff and in the market.

6. And the plaintiff also excepts to so much of said report as finds that the sales proven by the testimony of Charles A. Bartlett and George W. Beckwith were "not shown to have been made in the regular course of business," because such finding is wholly unsupported by any evidence, and, on the contrary, those sales were shown, indisputedly, to have been made at wholesale rates and to the trade.

7. And, generally, plaintiff excepts to the whole report as being in so confused and contradictory a condition that no judgment can be entered upon it, and respectfully asks this honorable court to as certain from the evidence in the case and determine for itself the amount of plaintiff's damages and to enter judgment therefor, entirely irrespective of said report.

GEO. W. COTHRAN,
Plaintiff's Solicitor.

(Endorsed:) Filed March 1st, 1884. Wm. H. Bradley, clerk.

180 Afterwards, to wit, on the third day of March, in the adjourned March term of said court, 1884, in the record of the proceedings thereof in said entitled cause, before Hon. Thomas Drummond, circuit judge, is the following entry, to wit:

Order.

EUGENE B. MYERS
vs.
BERNARD CALLAGHAN, ANDREW CALLAGHAN, SHELDON A. CLARK, MARSHALL D. EWELL, and V. B. DENSLOW. } In Chancery.

This cause having been heretofore argued by the counsel of the respective parties upon the pleadings and proofs and duly considered by the court, it is adjudged and decreed that the plaintiff is owner of the copyright and of the exclusive right of publication of the volumes described in the amended supplemental bill and known as volumes 39, 40, 41, 42, 43, 44, 45, and 46 of the "Reports of cases at law and in chancery in the supreme court of Illinois," commonly known as the "Illinois Reports of Norman L. Freeman," and that the said defendants have in some particulars infringed the said copyrights of the Illinois Reports; and it is further ordered, adjudged, and decreed that the plaintiff recover of the defendants
181 the profits which they have received or made and which have accrued to them by the printing, publication, and sale of the volumes hereby found to be an infringement of the copyright of the plaintiff; and it is further ordered, adjudged, and decreed that this case be referred to John I. Bennett, Esq., one of the masters of this court, to take and hear the evidence herein and report to this court an account of the profits which the said defendants have received or which have accrued to them from the publication and sale of the volumes published and sold by them and referred to in the pleadings, and which are hereby found to be an infringement of the copyright of the plaintiff; and it is further ordered that said defendants may be examined in relation thereto, and that they may be required to produce before the said master their books of account and papers relating to the publication and sale of the said volumes last named; and when the said master shall have taken an account of the said profits and assessed the damages he shall return his report of the same to this court for the further action of the court herein.

182 Afterwards, to wit, on the 24th day of October, 1884, came John I. Bennett, one of the masters in chancery of said court, and filed in said clerk's office his report in said entitled cause, which said report is in the words and figures following, to wit:

Master's Report.

Circuit Court of the United States, Northern District of Illinois.

EUGENE B. MYERS *vs.* BERNARD CALLAGHAN *et al.*

To the Honorable Thomas Drummond, judge, &c.:

An order was entered in this cause on the 3d day of March, 1884, referring the same to me for the purpose of taking and hearing evi-

dence herein in respect to the damages sustained by the complainant in consequence of the illegal publication and sale of the volumes of Illinois Reports mentioned therein and numbered 39 to 46, both inclusive.

Upon this reference I have been attended by the parties, by themselves and their respective solicitors, and the testimony of various witnesses has been taken in the cause, all of which testimony is herewith reported.

I have also considered portions of the evidence taken in the
183 cause before Mr. Bishop, master, on another reference.

The cause was argued by counsel before me, and, upon due consideration, I have arrived at the following conclusions:

It is necessary to determine three general questions of fact in order to ascertain the net profits to the defendants or damages to the complainant arising from the sale of the infringing volumes involved in this reference—first, as to what number of volumes was sold by them; second, as to what amount was received therefor; and, third, as to what deductions the defendants are entitled to have made from the gross amount of the sales.

First. The complainant claims that 2,448 volumes were sold. Defendants substantially admit the sale of 2,260 volumes. Exhibit "A" to Clements' evidence purports to show the whole number of volumes printed to have been 3,822 and the number unsold and on hand, 1,562. Exhibit "I" to James E. Callaghan's evidence shows that the whole number of volumes bound was 2,454. His evidence explanatory of the exhibit shows that there are in the hands of the defendants, of these bound volumes, 166 (exclusive of volume
184 40, of which there are 96). Deducting 166 from the whole number bound, gives as the number disposed of by the defendant, not including the four copies of volume 40, and not accounted for, 2,288 volumes, making, with the four volumes referred to, 2,292. The entry in defendants' books in respect to the number printed of vol. 41 does not purport to show the whole number printed. From this fact I think it more reliable to adopt as the basis of determining the number of volumes sold James E. Callaghan's statement as to the total number bound and the bound volumes on hand. The number of unbound volumes remaining in the hands of the defendant are—of volume 40, 350, and other volumes, 950; in all, 1,300.

Counsel for complainant contends that he is entitled to damages for resales of the same volumes where after the original sale they have again come to their hands and been resold one or more times. I cannot concur in this view. It seems to me that the damage resulting to complainant from the sales of these infringing volumes arises from the supply of a demand for the volumes of the original publication by the sale of the infringing volumes. On this theory I think the damages arising to complainant for a single
185 sale only of the same volumes should be charged to the defendants, and therefore disallow the complainant's claim for additional damages upon these sales. There were 156 of these resales, and if I am wrong in the view which I have taken of this

question claimant would be entitled *would be entitled* to receive on these resales the additional sum of $696.38.

Second. The experts testifying on behalf of the respective parties make their estimates of the average price per volume for which the reports were sold under instruction of counsel as to the basis upon which their estimates are respectively made.

Witness Clements, testifying on behalf of complainant, reached his result by dividing the total amount received from all sales of single volumes, of which there were 394 copies sold, by the number of volumes sold. In this way he makes the average price received $4.588 per volume.

On the other hand, James E. Callaghan, testifying as an expert on behalf of the defendants, reached his result as to the average price per volume received by the defendants (except as to a small number of volumes) by deducting the amounts received from the
186 sales of the Freeman volumes at the full retail price, including the profit thereon of $1.00 or thereabouts, from the gross receipts from all sales and dividing the remainder by 46. (See James E. Callaghan's evidence, page 4.)

Making the estimate in this manner Mr. Callaghan concludes that the average price at which the infringing volumes were sold was $4.34 per volume. The contention upon the price per volume realized is, therefore, narrowed down to $2.48 per volume.

Counsel for defendants contends that the basis adopted by complainant for ascertaining the prices realized is unfair, because it is claimed that single volumes sold for a larger price than was realized from sales when made in sets or in a considerable number of reports at the same time and to the same purchaser.

Defendants claim, also, that this is shown to be the fact by the evidence in the case.

On the other hand, counsel for the complainant contends that the basis adopted by the defendants is unfair, because he says that it is shown by the evidence that the defendants obtained the Freeman reports at a low price, fixed an arbitrary sum to be added as
187 profit for handling them, and that consequently the resulting price per volume, as reached in this way, is arbitrary and unfair. I think there is more or less force in the objections raised to both methods of arriving at the price per volume at which these sales were made. Of the two methods that based upon the figures at which actual sales were made would seem to be the more reliable; but there is some evidence in the case tending to support the claim that these sales of single volumes were made at a figure higher than an average price, and I have concluded to adopt an average between the two results as the basis for making my report. This average is $4.464 per volume. At this price the defendants must have received $10,231.48 from the sales of these infringing volumes.

Third. But the principal contention in the case is in regard to what amounts the defendants are entitled to have deducted from sales. The evidence shows that there remains in the hands of the defendants unsold 1,562 volumes, of which 262 are bound (96 of

volume 40 and 166 of other volumes) and 1,300 are unbound (350 of volume 40 and 950 of other volumes), but ready for binding, and that the stereotype plates are also in the hands of the defend-
188 ants. There is no evidence tending to show the non-existence of the stereotyped plates of the Freeman edition, and they must be presumed to be in existence.

It is contended on behalf of the defendants that, although this large number of volumes and these plates are retained by the defendants, and altho' they do not propose to surrender them to the complainant, the total cost of producing those unbound volumes and the stereotype plates, in addition to the cost of producing and selling the volumes sold, must be deducted from the proceeds of the sales which have been made, and that the defendants are only liable to account for the balance after these deductions are made, while it is contended on the part of the complainant that the deductions should be limited to the cost of production and sale of the volumes which were in fact sold.

Upon this question I hold with the complainant. The books and plates in the hands of defendants, although made in infringement of a copyright, are of value, and should bear the expense of their own production.

The rule contended for on behalf of defendants would place it in the power of the infringer to constantly keep the expense account of the infringer in excess of profits upon sales made, and thus
189 always defeat a recovery of damages. The infringement and consequent damage to the complainant may be regarded as accruing upon the manufacture and sale of single volumes, and not necessarily in gross.

Another subordinate question argued before me is with respect to the *onus* of proof in regard to those deductions. Whether it is cast upon complainant to prove as a part of his original case what should be allowed as deductions, or whether upon the complainant proving the amount realized from the sales of the infringing volume, it becomes incumbent upon the defendants to show by way of defense what deductions from these receipts they are entitled to have made.

During the progress of the proceedings before me on this reference it was contended on the part of the defendants that it is incumbent upon the complainant to prove the amount of deductions to which the defendants are entitled as well as the amount realized from sales made by them. At the same time the defendants were unwilling to produce their books of account before me for the ascertainment of these facts, except upon my order or that of the
190 court, and they have contended that this compulsory production of their books was in violation of the constitutional right of immunity from search.

Upon the question of these deductions they have also refused to produce their books, and have maintained the position that the complainant is bound by the showing made by the witness, George W. Beck, in his evidence taken before Mr. Bishop in 1881 upon another reference. From the condition of the proofs before me it is possible

to find upon the facts in respect to these deductions without determining upon which party the *onus* of proof rests.

The costs of production and sale of these infringing reports are of two classes—first, the specific and known cost, and, second, the approximate or prorated general expense incurred through manufacture and sale.

In respect to the specific and known costs defendants rely upon Exhibit "I" to James E. Callaghan's evidence. The items of "press-work," "paper," and "composition" as shown in that exhibit are not controverted. It is agreed also that the stereotype plates cost one-half as much as the composition, so that the cost of the
191 composition and stereotype plates can also be readily determined from that exhibit.

The item of "editorial work" is disputed. The evidence shows that Mr. Denslow was employed to revise and recast the syllabi and statement of the cases in the reports in question so that they would differ from those of the Freeman edition in cases where Mr. Denslow thought a change should be made and in cases where he should discover errors upon an examination of the original opinions on file at Ottawa, Springfield, and Mt. Vernon, and that Mr. Denslow did this work; it also shows that as to volume 39 Judge Bailey; as to volume 43 Mr. North, and as to volumes 44 and 45 Mr. Ewall, performed like service. In the case of these latter volumes, however, the work of Messrs. Bailey, North, and Ewall was revised by Mr. Denslow.

It is contended that this work added to the value of the reports, produced larger receipts from sales, and that the amount paid for it ought, therefore, to be deducted from the receipts. The object of introducing this evidence on the part of the defendants was
192 evidently primarily to show there was no infringement. Upon that question the court has decided.

The complainant contends that this editorial work was done for the express purpose of infringing his copyright, and that this expenditure, as well as all cost of stereotyping, was made by the defendants in their own wrong, and ought not, therefore, to be allowed. The complainant had his stereotype plates, and the editorial work in connection with them had been performed. The cost to the complainant, therefore, had he finished the corresponding volumes of the Freeman edition, would not have been attended with any of this expense of stereotyping and editorial work, and his profits would have been that much larger. It is fair to presume that he would have placed an equal number of the volumes of the Freeman edition in the hands of purchasers had their sales not been supplanted by the infringing volumes. It would, therefore, seem that his damages ought not to be reduced by this extraordinary expense.

The number of reports produced and sold by the defendants is not so large, as it seems to me as to have warranted the ex-
193 pense of stereotyping. The largest number sold of any one volume—which was volume 46—was only 344 volumes. For such an edition as this, or one embracing also the unbound books on hand, stereotyping would seem to have been an unwarranted ex-

pense, and I therefore disallow as a credit the cost of stereotyping, which amounted to $2,506.51, of which $1,330.77 was for changes and corrections. For like reasons I also disallowed the claim made for editorial work.

The evidence shows that the cost of binding of all the volumes sold was $992.18. Omitting the items which I have heretofore enumerated as disallowed, and bearing in mind that the evidence shows that the relative cost of composition and stereotyping is as two to one, the known cost of both the volumes sold and those on hand (exclusive of volume 40), not including the cost of binding, is ascertained as follows: James E. Callaghan's evidence shows that the cost of stereotyping and composition was $7,519.54. Deduct from this amount the cost of changing plates, $1,330.77, and there remains as the cost of stereotyping and composition—disallowing this amount—$6,188.77. Two-thirds of this amount gives as the
194 cost of composition the sum of..... $4,125 84
Add cost of paper..... 967 32
And cost of press-work..... 379

A total of..... $5,472 16

Excluding volume 40 and there were in all 3,404 volumes sold and remaining on hand (of which 2,288 were sold and 1,116 are on hand). Proportioning the above cost of composition, paper, and press-work in the ratio of 2,288 to 1,116 gives as the proportionate cost, exclusive of binding, of the 2,288 volumes sold..... $3,678 03
Add to this the cost of binding as above..... 992 18
And also the cost of producing the four vols. of 40 Illinois..... 9 34

$4,679 55

As the total cost of known expenses of production of all the volumes sold, exclusive of stereotyping. It is contended on the part of the defendants that the court is compelled to apply the doctrine of the case of Tremain *vs.* Hitchcock, 23 Wal., 518, to the figures shown in Exhibit "A" to Beck's evidence and Exhibit "I" to James E. Callaghan's evidence, including the columns "general expenses" and proof in the case was not of such a character as to entitle those columns to such weight as evidence as to compel the adoption of 17 per cent. as the average of the general expenses of the defendants. The evidence since introduced has not materially affected the question so far as relates to these columns of those exhibits, and
195 I am compelled to adhere to the views then expressed and incorporated into this report in connection with the evidence.

While the formula approved by the Supreme Court of the United States for the ascertainment of what may be termed this "expense average" is perhaps as fair a rule as can be formulated in the absence of knowledge of the actual amount, yet the fairness of the rule must depend entirely upon the correct ascertainment of the two terms

or elements which form the ratio or percentage, namely, the total amount of the sales made during the given period and the general expenses of the business during the same time.

If either of these elements is erroneous an erroneous ratio or percentage must result. When this formula is sought to be applied, therefore, the parties have, as it seems to me, a right to sift the evidence offered in support of the rule, in respect to the character and amount of the items constituting what are claimed as sales during the given period, and also in respect to all of the items claimed as general expenses during this same time.

The contestant has a right to insist upon the elimination and rejection of every item included in the expense column which may appear as legitimate and to include in the amount of sales
196 all items which may have been improperly omitted from the sales account.

The adoption of the formula implies that absolute accuracy is impossible; but, in order that the formula should have application, the court should be satisfied that these amounts are substantially correct.

In the present case the defendants strenuously objected to the production of their books to throw light upon the character and amount of these items or to allow their examination by an expert for the purpose of stating their character and amount.

If the law were that in a case of this sort a defendant is not compellable to produce his books, and that at the same time the complainant would be bound to prove these items of expenses and sales, the evidence of which necessarily lies entirely within his control, proceedings in this class of cases would become a farce.

The order of reference to me required the production of these books, and the defendants having failed and refused to produce them for the ascertainment of the items making up what constitutes "general expenses" and "sales," no presumption should, I think, be entertained in favor of the expense average of 17 per cent.

197 Exhibit "B" to G. W. Beck's evidence, taken before Mr. Bishop, does show that, among the items included in this amount of alleged general expenses, were the amounts paid for legal expenses in this very litigation, amounting to $2,083.90, and moneys drawn out of the capital of the firm by its different members, amounting to $50,750, a total of $52,833.90.

It is clear that no part of the legal expenses paid out in defence of this litigation should be chargeable to the complainant, and I think that the amounts drawn by the different members of the firm during these years, under whatever name designated, are not properly items of general expense.

It is claimed on the part of defendants that this large sum drawn by the defendants was made up of salaries of the members of their firm, and that as such it is a proper item of general expense.

In the case of Rubber Co. *vs.* Goodyear, 9th Wall., 988, cited by counsel for defendants, the defendant was a corporation, whose officers would be necessarily salaried. A careful examination of the

articles of copartnership existing between the defendants, who
198 have drawn these amounts, and the other evidence in the case satisfies me that these amounts are not salaries or of such a character as entitles them to be classed as general expense. The articles of copartnership between the defendants drawing these funds, in force from July 1st, 1875, to July 1st, 1879, provided that "each of said Callaghans shall be entitled to draw out of the business, for his personal expense and support, the sum of two hundred and fifty dollars ($250) monthly, and no more; and the said Clark the sum of two hundred and eight dollars and thirty-three cents ($208.33) monthly, and no more;" and the articles in force from July 1st, 1879, to 1882, provided that "during the continuance of the copartnership each of the parties hereto shall be entitled to draw from the firm, for his own expense and support, the following sums, and no more: The said Andrew P. Callaghan the sum of four thousand dollars ($4,000) and each of the other partners the sum of three thousand dollars ($3,000), such sums to be drawn in monthly installments." In the one case they were "to draw out of the business" for "personal expenses and support," and in the other "to draw from the firm for his own expense and support."

The evidence shows that the profits went into the business. The language quoted indicates, I think, that the amounts
199 stipulated to de drawn out were not entirely gauged by the amount of compensation for services of the several partners. The payment of these amounts has more the appearance of a division of profits than of the adjustment of salaries.

Rejecting these large items and applying the formula recognized by the Supreme Court—that is, dividing the expenses so reduced by what is claimed as the total sales—and an average of a little over 12 per cent. results.

While the proof is not satisfactory in respect to the remaining items which make up the amount claimed as "general expenses," and in respect to the items constituting the "total amount of the sales," I have concluded to allow 12 per cent. as the expense average upon the sales made during the period covered by the evidence as to the general expenses of the defendants, but not upon the sales made thereafter. This period was the years 1878, 1879, and 1880. It appears from Complainant's Exhibit "B" to Myers' evidence. that there were sold during these years 2,088 volumes. The receipts from these sales were $9,320.83. Twelve per cent. of this amount is $1,118.49. There being no proof from which the percentage of general expenses of the business of the defendants can be as-
200 certained, the percentage cannot be applied to the receipts from the sales of the remaining 200 volumes which were sold after 1880. Had this percentage been applied to the receipts from the sales of these 200 volumes it would have produced $107.14.

I therefore find that the total amount which the defendants have received as the proceeds of the sales of all volumes sold is $10,231.48. That they are entitled to the following deductions:

Known cost of all volumes sold	$4,679 55
Percentage of expenses on sales of 2,088 volumes	1,118 49
Making a total of	$5,798 04

Which, taken from the total receipts, leaves $4,433.44 as the total amount of net profits and damages to the complainant resulting from the sale by defendants of the infringing volumes of the Illinois Reports, embracing volumes 39 to 46, inclusive.

Recapitulation.

I find the number of infringing volumes sold to be		2,292
The number of bound volumes to be, of volume 40		96
Of other volumes		166
Total number bound on hand		262
Number unbound on hand to be, of volume 40	350	
Of other volumes	950	
Total number unbound and on hand		1,300
Total number bound and unbound on hand		1,562
201 The total number on hand and sold, including 40 p. of vol. 40		3,854
The total number bound and on hand, excluding vol. 40		1,116
The average price per volume received		$4,464
The total gross receipts from sales of all infringing volumes		10,231 48
Known cost of all volumes sold		4,679 55
Percentage of general expenses		1,118 49
Total cost of producing volumes sold		$5,798 04
Net receipts from sales		4,433 44
Cost of stereotyping, not including changes and corrections		1,176 51
The cost of changes and corrections		1,330 77
Total for stereotyping, changes, and corrections		2,507 28
Percentage of general expenses upon the sale of 200 volumes sold after 1880, if allowed		107 14
Damages for 156 resales, if allowed		696 38

I therefore recommend a decree in favor of complainant and against the defendants for $4,433.44.

Chicago, Oct. 24th, 1884.

JOHN I. BENNETT,
Master in Chancery.

202 Afterwards, to wit, on the fifteenth day of November, 1884, came the complainant, by his solicitor, and filed in said clerk's office his exceptions to the report of John I. Bennett, one of the masters in chancery of said court, in said entitled cause, which said exceptions are in the words and figures following, to wit:

203 *Plaintiff's Exception to Master Bennett's Report.*

United States Circuit Court, Northern District of Illinois. In Chancery.

EUGENE B. MYERS *vs.* BERNARD CALLAGHAN *et al.*

Exceptions by above-named plaintiff to report of John I. Bennett, Esq., master in chancery, filed in this cause.

First exception. For that said master has ascertained, computed, and allowed damages on sales of only 2,292 copies of volumes sold by defendants, when he should have ascertained and allowed damages on sales of 2,448 volumes; and also to his finding that but 2,292 copies were sold by the defendants, whereas the proofs show that 2,448 copies were sold by defendants.

Second exception. For that said master has disallowed plaintiff's claim for damages on sales of second-hand copies of volumes sold by defendants, of which the evidence shows there were 156 copies sold.

Third exception. For that said *said* master has adopted an erroneous theory of arriving at *and* an erroneous average price per volume at which defendants sold the copies of infringing volumes, he having found that such copies were sold at an average price of $\$4.46\frac{4}{10}$, whereas the true average price was $\$4.58\frac{8}{10}$ per copy,
204 and he excepts to the gross sum found as damages by said master, viz., $10,231.48, and insists that it should be increased by a sum equivalent to the difference in average price per copy between $\$4.58\frac{8}{10}$ and $\$4.46\frac{4}{10}$, amounting in all to $10,515.69.

Fourth exception. For that said master has allowed as a deduction by way of expense $1,118.49 as a percentage of the general expense of defendants' business and has deducted the same from the damages found by him to have been sustained by plaintiff in consequence of the sale by defendants of copies of the infringing volumes, and plaintiff insists that such item was not established by the proofs before the master and should have been disallowed.

Fifth exception. For that said master has allowed a percentage of 12 per cent. of general expenses of defendants' business on sales of 200 copies of volumes sold after the year 1880, and as to such sales there was no proof whatever before the master on the subject of general expenses of defendants' business, and the sum of $107.14 thus allowed by him should be added to the plaintiff's damages and deducted from defendants' allowance.

Wherefore said plaintiff excepts to said report and appeals therefrom to the judgment of this court.

EUGENE B. MYERS,
By JNO. W. COTHRAN,
His Solicitor.

Endorsed: Filed Nov. 15, 1884. Wm. H. Bradley, clerk.

205 Afterwards, to wit, on the twenty-second day of November, 1884, came the defendants, by their solicitor, and filed in said clerk's office their exceptions to the report of the master in said entitled cause, which said exceptions are in the words and figures following, to wit:

206 *Defendants' Exceptions to Master's Report.*

UNITED STATES OF AMERICA, } ss:
Northern District of Illinois, }

In the Circuit Court of the United States. In Chancery.

EUGENE B. MYERS *vs.* BERNARD CALLAGHAN *et al.*

And now come the defendants, Bernard Callaghan, Andrew Callaghan, Andrew P. Callahan, and Sheldon A. Clark, by James L. High, their solicitor, and except to the report of John I. Bennett, Esq., one of the masters of this court, filed herein on the 24th day of October, 1884, concerning the damages claimed by complainant by reason of the publication and sale by defendants of volumes 39 to 46, inclusive, of the Illinois Reports, and show here to the court the following grounds of exception to the said report:

First. For that the said master finds the number of said volumes sold by defendants to be 2,292, whereas the testimony shows that only 2,189 of said volumes *was* sold by defendants.

207 Second. For that the said master states in his report that "defendants substantially admit the sale of 2,260 volumes," whereas defendants only admit the sale of 2,189 volumes.

Third. For that the said master finds the total number of bound volumes on hand to be 262, which finding is not sustained by any testimony in the record.

Fourth. For that the said master finds the total number of said volumes on hand and sold, including four copies of volume 40, to be 3,854, which finding is unsustained by any testimony in the record.

Fifth. For that the said master finds the average price received by defendants for the sales of said volumes was $4.46, whereas it appears by the testimony that the average price received was only $4.34.

Sixth. For the said master finds that the total gross receipts from the sales of said volumes was $10,231.48, whereas the proof shows that the total gross receipts were only $9,459.38.

Seventh. For that the said master finds the known cost of all vol-

umes sold to be $4,679.55, whereas it appears by the proofs such cost was very largely in excess of the amount so found by the master.

208 Eighth. For that the said master finds that defendants are entitled to a credit of only $1,118.49 on account of the general expenses of conducting their business, being at the rate of twelve per cent. of their gross sales, whereas the proof shows that defendants are entitled to a credit of seventeen per cent. of their gross sales on account of the general expenses of conducting their business.

Ninth. For that the said master finds that the total cost of producing the volumes sold was $5,798.04, whereas, as appears by the proof, the total cost of producing said volumes was largely in excess of the amount so found by the master.

Tenth. For that the said master finds that the net receipts on sales of said volumes were $4,433.44, whereas it appears by the proofs that there were no net receipts or net profits on account of such sales, the expenses of producing said volumes being largely in excess of the gross receipts from their sales.

Eleventh. For that said master finds that the net profits realized by the defendants on account of such sales and the damages of the complainant on account thereof were $4,433.44, and recommends a decree for that amount in favor of complainant,

209 whereas it appears by the proofs no profits were ever realized by defendants on account of such sales, the expenses of producing said volumes being largely in excess of the gross receipts from their sales.

Twelfth. For that the said master finds that 200 of said volumes were sold by the defendants after the year 1880 and during the years 1881, 1882, 1883, and 1884 and allows complainant damages on account of such sales, whereas the proof shows that none of said volumes were sold by said defendants after March, 1881, except at second-hand.

Thirteenth. For that the said master has refused to allow defendants credit for the cost of production of the volumes unsold and remaining on hand.

Fourteenth. For that the said master has refused to allow the defendants credit for sums expended by them for editorial work in the preparation of their said volumes and has not included the cost of such editorial work in the cost of producing said volumes.

Fifteenth. For that the said master has refused to allow defendants credit for the amount expended by them in stereotyping

210 said volumes and has not allowed the cost of such stereotyping as a part of the cost of producing said volumes.

Sixteenth. For that the said master has refused to allow as a credit to defendants on account of the expenses of conducting their business the amounts shown by the proof to have been paid to defendants as compensation for their services during the period in question.

Seventeenth. For that the said master finds that "the evidence shows that Mr. Denslow was employed to revise and recast the syllabi and statement of the cases in the reports in question so that these

would differ from those of the Freeman edition in cases where Mr. Denslow thought a change could be made," which finding is unsupported by any testimony in the record.

Eighteenth. For that the said master finds that the defendants were unwilling to produce their books of account before him, except upon his order or that of the court, and that they have contended that the production of their books was in violation of the constitutional right of immunity from search, and that they have re-
211 fused to produce their books to prove the amount of deductions to which they are entitled, and that they strenuously objected to the production of their books to throw light upon the character and amount of the items of their expenses or to allow their examination by an expert for that purpose, and that they have failed and refused to produce their books for an ascertainment of the items constituting their general expenses and sales.

All which findings and statements of the master are unsupported by any testimony in the record and unfounded in fact.

J. L. HIGH,
Solicitor and of Counsel for Defendants.

Endorsed: Filed the 22nd day of Nov., A. D. 1884. Wm. H. Bradley, clerk.

212 Afterwards, to wit, on the fourth day of March, in the adjourned March term of said court, 1885, in the record of the proceedings thereof in said entitled cause, before Hon. Henry W. Blodgett, district judge, is the following entry, to wit:

Order.

EUGENE B. MYERS
vs.
BERNARD CALLAGHAN *et al.* } In Chancery.

Now come the parties, by their solicitors, and now comes on to be heard the exceptions of the complainant and defendants to the reports of masters in chancery, Bishop and Bennett, of the damages sustained by the complainant herein; and, after hearing the the arguments of counsel in part, further hearing herein is hereby postponed until to-morrow morning.

Afterwards, to wit, on the fifth day of March, in the adjourned March term of said court, 1885, in the record of the proceedings thereof in said entitled cause, before Hon. Henry W. Blodgett, district judge, is the following entry, to wit:

Order.

EUGENE B. MYERS
vs.
BERNARD CALLAGHAN *et al.* } In Chancery.

213 Now again come the parties, by their solicitors, and this cause again comes on to be heard, in pursuance of the order

of postponement entered yesterday; and, after hearing the concluding arguments of counsel, the court takes the same under advisement.

Afterwards, to wit, on the sixth day of July, in the July term of said court, 1885, in the record of the proceedings thereof in said entitled cause, before Hon. Henry W. Blodgett, district judge, is the following entry, to wit:

Order.

EUGENE B. MYERS
vs.
BERNARD CALLAGHAN *et al.* } In Chancery.

Now come the parties, by their solicitors, and the court having considered the exceptions of the defendants to the master's report herein, sustains the first and second exceptions and overrules all others.

Afterwards, to wit, on the ninth day of July, 1885, Judge Blodgett delivered the following opinion in said entitled cause:

214 *Opinion.*

U. S. Circuit Court, N. D. of Illinois.

EUGENE B. MYERS *v.* BERNARD CALLAGHAN *et al.*

Copyright case. Infringement. Damages.

BLODGETT, *J.*:

The original bill in this case charged that complainant was owner of the copyright of volumes 32 to 38, inclusive, of the reports of the decisions of the supreme court of Illinois, and that defendants had infringed the same. By the supplemental bill complainant charged that he was the owner of the copyright of volumes 39 to 46, inclusive, of the same series of reports, and that defendants had infringed upon his right as such owner, and an accounting was decreed as to both bills after hearing on the pleadings and proof, and reference was made to masters to ascertain and report the amount of defendants' profit in the publication and sale of the infringing volumes, the case made under the original bill having been referred to Bishop, master, and the case made under the supplemental bill having been referred to Bennett, master.

These masters have respectively made their reports, Mr. Bishop by his report finding that defendants should be charged with $13,451.19 as the proceeds of the sale of volumes 32 to 38, and that they were entitled to be credited with $6,465.14 as the proper cost of producing said volumes, thus leaving profit of $6,986.05, for which he recommended a decree be made. This report was on the basis that the average sale of these volumes by defendants was at the rate

of $4.62½ per volume, which the master concluded was a fair average price, as shown by the proofs. Mr. Bennett by his report found that the defendants should be charged with $10,231.48 as the proceeds of sales of volumes 39 to 46, inclusive, and that they were entitled to be credited with $5,798.44 as the proper cost of producing said volumes, thus leaving a profit to the defendants of $4,433.44.

Both complainant and defendants have filed exceptions to these reports, and these exceptions have been argued orally and by briefs supplementing the oral arguments.

The objections urged on behalf of complainant are mainly to the report of Mr. Bennett. The first objection is that the master refused to allow as part of complainant's damages the profits of the defendants on about 156 of the infringing volumes which had been sold by defendants and purchased in again as second-hand books and resold, the master holding that, having charged the defendants with the profits on the first sale of these volumes, they had a right to buy them in at second hand, and could then sell them again without accounting for the second profit. I think this exception well taken. The law intends to secure the owner of a copyright of any book or literary composition the monopoly of the market for such book—that is, the right to supply all who wish to purchase; and if the infringing publisher can buy at second hand the infringing publication and again place it on the market, to that extent he supplants the owner of the copyright, who has the right to supply the demand. It is well known that many books are purchased only to serve a temporary purpose by the purchaser, and when that purpose has been served the purchaser has the right to put the book again upon the market. When he does so and finds a purchaser he, to that extent, interferes with the owner of the copyright. While it may be true, if an infringing publisher has sold a volume and accounted to the owner of the copyright the purchaser of that volume holds it free of any claim by the owner of the copyright, yet I do not understand that such purchaser can put the work again upon the market without accounting to the owner of the copyright; and the case seems much stronger, from an equitable point of view, when the infringing publisher buys the book or volume he has thus sold, and again puts it upon the market and supplies the customer, who otherwise would have been compelled to buy from the owner of the copyright. I therefore conclude that the master should have charged the defendants with the profit on these resales.

The next exception of complainant to Mr. Bennett's report goes to the mode by which the master arrived at the average price at which defendants sold the infringing volumes 39 to 46. The defendants are publishers of and dealers in law books in the city of Chicago. They own the copyright or control the sale of volumes of the Illinois Reports from 1 to 31, inclusive. Mr. Freeman, the present official reporter of the supreme court, owned the copyright of all the volumes above 46, and the most of these sales were made in sets, the infringing volumes being used to fill out the sets; defendants purchased the volumes above 46 of Mr. Freeman at his regular rate; and for the purpose of determining the selling price of the

infringing volumes the master deducted from the amount received for a full set of reports the amount paid Mr. Freeman, and then divided the balance by 46 to obtain the price at which defendants sold the infringing volumes, thus making the selling price of the infringing volumes and those owned or sold by the defendants the same, and by this rule the average selling price of the infringing volumes is $4.34, while the complainant insists from the proof before the master of separate sales by defendants of nearly 400 copies of the infringing volume, on the average price of $\$458\frac{8}{10}$; but the master, in consideration of the impossibility of ascertaining from the proof the exact price which defendants had received for the infringing volumes, split the difference between the price arrived at by the defendants' rule and that contended for by the complainant, and fixed the selling price at $\$4.46\frac{4}{10}$ per volume. In this I think the master approximated as nearly to the true amount as could be done, and I am not disposed to disturb his action in that regard. It is conceded that the exact selling price can not be arrived at from the proof. It also appears that about 400 copies were sold at higher rates than results from the price by sets, and I think the master was justified in taking the mean result of the two methods.

The next objection involves the conclusion by both masters as to the percentage of the general average expenses of defendants' business which should be deducted from the proceeds of the sales of the infringing volumes, the objection being mainly urged on the ground that defendants had not clearly and actually shown from their books and other sources, by proof, the percentage of their expenses to the receipts in the transaction of their business during the time the infringement was going on. Inasmuch as the object of an inquiry like this is to ascertain the profits which defendants have made or ought to have made from their infringement of the copyright and award those profits by way of damages to the complainant so that the defendants shall make no gain by their piracy, it is clear that, in order to arrive at these profits, we must, as near as practicable, ascertain the proper cost to defendants of manufacturing the infringing volumes and the cost of selling the same; or, in other words, if the cost of selling these particular books was only a part of defendants' business, how much of the general expenses of the defendants in conducting their business should be deducted from the proceeds of these sales. The defendants contended that the proof shows that it cost them 17 per cent. of the gross proceeds of sales to sell their books, and that therefore they were entitled to a credit of that amount from the proceeds of the sales in addition to the cost of production. Mr. Bennett concluded from the proof before him that 12 per cent. was a fair allowance to the defendants for their general expense credit, and Mr. Bishop from the proof before him allowed $12\frac{7}{8}$ per cent. for these average expenses. Without discussing, which, it seems to me, it would not be profitable or material at this stage of the case to do, the question as to who had the burden of proving the credit to be allowed defendants from the gross proceeds of their sales in order to determine their profits, it is sufficient to say that the conclusions of the two masters as to the percentage of this general ex-

pense account are so nearly alike that I am fully content to allow their findings in this regard to stand. If the testimony before Mr. Bennett was left in any respect incomplete or unsatisfactory by reason of defendants declining to produce papers or books the complainant could, by proper application to the court, have compelled the production of such books, and, having failed to make such application, it is now too late to complain on that ground. Both parties submitted before the master such proof as they saw fit upon the question of expense, and if either of them thought more proof necessary and obtainable they should have applied to the court for it in apt time.

The next objection is in regard to the finding of Mr. Bishop as to the price at which defendants sold volumes 32 to 38, inclusive. He found the average price per volume at which the defendants sold the infringing volumes 32 to 38 was $4.62½, while the plaintiff insists that the price, as fixed by the proof, of sales of separate volumes and defendants' catalogue of prices should have been found much higher. I have examined the proof and am content with the master's finding in this regard. As I have said in regard to Mr. Bennett's finding, it is impossible to determine from the evidence the exact average price per volume and also impossible to determine the exact price at which defendants sold each infringing volume. The master seems to me to have carefully considered all the proof before him and, I think, has fairly approximated to the truth.

Upon the accounting the defendants claimed as part of the expense of producing the infringing volumes the cost of making stereotype plates, instead of printing the edition from the type. This item is conceded by the proof to be equal to fifty per cent. of the cost of composition—that is, if it cost $500 *dollars* to set the type for a volume, it costs $250 more to make stereotype plates, thus making the plates for the volume cost $750. Both masters on the accounting rejected this item and allowed only the cost of type-setting, press-work, binding, and the cost of materials used in producing the infringing volume, and defendants' first exception goes to the refusal of the masters to allow them for this expense of stereotyping. I think the testimony before the masters upon this point shows quite satisfactorily that it is now a common practice among publishers of standard books to stereotype the matter and print from the stereotype plates; but it shows with equal certainty that stereotyping is merely a convenience to the publisher and not a necessity, and I fully concur with the masters who have considered this case that an infringer should not be allowed to charge an unnecessary cost against one whose rights he has invaded. The defendants have been found by the decrees in this case to have been trespassers and wrong-doers in the premises and should not be permitted to charge the complainant with this stereotyping expense which they might perhaps have properly incurred if they had had the lawful right to publish these volumes. The defendants must be held to have known at the time they incurred this expense that they were wrong-doers and could not proceed in all respects as though they had a right to publish these books and make their arrangements to continue the publication as

the demand should arise for future editions, while all these expenses might with entire propriety have been incurred by one who had the lawful right of publication.

The next exception by the defendants is the refusal of both masters to allow the salaries of the several defendants as part of the general expense of conducting their business. The proof shows that the partnership agreement between the defendants contained provisions by which each member of the firm was entitled to draw out of the business for his personal expenses and support a specific sum per annum, and the contention of defendants is that the sum so drawn out by the respective partners is part of the general expenses of the firm in conducting its business, and should be included in order to arrive at the percentage of such expenses; but I agree with the masters that the complainant is not equitably obliged to contribute to the support of the defendants while they are engaged in destroying his property, as would be the case if the court should sustain the position of the defendants in this regard.

The only case which seems to support the defendants' position in this respect is Rubber Company *v.* Goodyear, 9 Wallace, 788, but that was a suit against an incorporated company, and the salaries of its officers for conducting its business were deemed part of the proper expenses of the company, thus differing, as it seems to me, in principle from this case.

The next objection by the defendants to the masters' report is that both masters refused to allow as an item of defendants' expense in producing the infringing volumes in question certain sums paid by defendants for editing these volumes. It seems to me this objection is fully met by the decree of the court, holding that these volumes infringe the complainant's copyright. It is said that, although the court so found, yet the defendants paid quite a considerable sum for editing these volumes, but neither the masters nor the court can draw the line and say how much of this editorial work ought to be paid for or allowed. The court has found that the books, as published, violated the complainant's copyright, and, so far as the complainant is concerned, it can make no difference whether the defendants have paid for editing them or not. They might as well, for the purposes of this case, have copied the books bodily without editorial help as to have imitated them to the extent found by the court.

Defendants also except to the finding of the masters as to the average selling price of the volumes. I have already said, in discussing the exceptions of complainant, all that I deem necessary as to these exceptions by defendants.

It is also contended by defendants that Mr. Bennett erred in finding that the defendants had made any profit by the publication of volumes 39 to 46, and insisted that the proof showed they had made no profits whatever out of the publication of these volumes. Much of the argument has already been considered in discussing the item of stereotyping, salaries, editorial work, etc., but it is also urged that Mr. Bennett erred in not allowing the defendants for the cost of the unsold volumes, the defendants contending that they should be

credited for the cost of these volumes in order to determine the profits of those already sold.

The decree in the case does not require the defendants to surrender these volumes to complainant, but merely enjoins the defendants from selling them. If the defendants should offer to surrender the volumes on hand to the complainant it would be equitable to require the complainant to allow the cost of these volumes in the accounting, but so long as the defendants decline, or at least do not offer to turn these unsold volumes over to the complainant, it does not seem to me right that they should be allowed the cost of producing them. Undoubtedly the defendants preferred to retain the possession of these volumes under the injunction restraining their sale until they had tested the question raised in the case by an appeal to the Supreme Court, rather than surrender them to the complainant, and so long as they elect to do this, it seems to me, the finding of the master is correct.

I have thus gone through the exceptions topically rather than *seriatim*, and have, I think, considered all the points raised in the numerous exceptions filed.

In regard to the question as to who has the burden of proof as to the amount of defendants' profit, it seems to me that while the court will not presume that all the money received by a piratical publisher on the sale of his books is profit, still, as the proof as to cost of producing the work is wholly in the control of the defendants, the complainant makes a *prima facie* case of right to recover by showing the selling price and the usual manufacturer's cost. The defendants, if for any reason they are not content to abide by the proof as to ordinary cost of production to the trade, must take the burden of showing by their own proof what their actual legitimate expenses were.

The complainant's first and second exceptions to Mr. Bennett's report are sustained, and all the other exceptions filed by complainant and defendants are overruled, and a re-reference ordered to Mr. Bennett to state the account as to the profits of the resold volumes, unless the parties shall stipulate as to such profits.

Filed July 9th, 1885.

WM. H. BRADLEY, *Clerk.*

215 On the same day, to wit, on the ninth day of July, in the July term of said court, 1885, in the record of the proceedings thereof in said entitled cause, before Hon. Henry W. Blodgett, district judge, is the following entry, to wit:

Decree.

EUGENE B. MYERS *vs.* BERNARD CALLAGHAN, ANDREW CALLAGHAN, Andrew P. Callahan, Sheldon A. Clark, Van Buren Denslow, and Marshall D. Ewell.	In Chancery.

This cause now coming on to be heard upon exceptions filed by the plaintiff and also upon exceptions filed by defendants to the re-

port of Henry W. Bishop, Esq., master in chancery, filed herein February second, 1884, and also upon exceptions filed by the plaintiff and also upon exceptions filed by defendants to the report of John I. Bennett, Esq., master in chancery, filed herein October twenty-fourth, 1884, and counsel having been heard in behalf of the respective parties in support of said exceptions, and the court being fully advised in the premises, it is ordered, adjudged, and de-
216 creed that plaintiff's exceptions numbered first and second to the report of Master Bennett be, and they are hereby, sustained.

It is further ordered, adjudged, and decreed that, except as to the said two exceptions sustained as aforesaid, all exceptions filed by plaintiff and also by defendants to the said reports of said masters, Bishop and Bennett, be, and they are hereby, overruled, and said reports, with the exceptions aforesaid, are hereby confirmed.

It is now here ordered, adjudged, and decreed by the court that said plaintiff is entitled to recover of the defendants, Bernard Callaghan, Andrew Callaghan, Andrew P. Callahan, and Sheldon A. Clark, as profits on the resales of the one hundred fifty-six volumes mentioned in the said two exceptions so sustained as aforesaid and in the report of said Master in Chancery Bennett the sum of three hundred forty dollars and seventy cents, which sum is in addition to the sum reported by said master to which said plaintiff is entitled to judgment herein.

It is further ordered, adjudged, and decreed that Eugene B. Myers, plaintiff, recover of the defendants, Bernard Callaghan, Andrew Callaghan, Andrew P. Callahan, and Sheldon A. Clark, the sum of six thousand nine hundred eighty-six dollars and five cents as reported by Henry W. Bishop, master in chancery; also the sum of four thousand four hundred thirty-three dollars and forty-
217 four cents as reported by John I. Bennett, master in chancery, and also the additional sum of three hundred forty dollars and seventy cents as ascertained by the court to be the profits made by said defendants on the sale of said one hundred and fifty-six second-hand volumes, amounting in the aggregate to the sum of eleven thousand seven hundred sixty dollars and nineteen cents, and that said plaintiff recover his costs of the defendants aforesaid, and that he have execution for the enforcement of this decree.

It is further ordered, adjudged, and decreed that the injunction heretofore granted in this suit on the original bill, covering volumes thirty-two to volume thirty-eight (both inclusive) of Illinois Reports, be, and the same is hereby, made perpetual.

It is further ordered, adjudged, and decreed that the said defendants, Bernard Callaghan, Andrew Callaghan, Andrew P. Callahan, and Sheldon A. Clark, their agents, servants, and all persons acting by, through, or under them, be, and they are hereby, perpetually restrained from printing, publishing, using, vending to others, or in any manner disposing of any copies of either or all of said volumes of Illinois Reports, from volume thirty-two to volume forty-six, both inclusive, from the stereotype plates of such volumes now in

their possession or under their control, and from which the
218 infringing volumes in controversy in this suit were printed, and from allowing or permitting any other person or persons to print any copies of either or all of said volumes of Illinois Reports for any purpose whatever, and from selling or disposing of said stereotype plates to any person or persons (other than to the plaintiff) until and unless they are destroyed for all purposes of being used to print from; and the said defendants, their agents, servants, and employees, and all persons associated with them in business, are also hereby perpetually restrained from selling or in any manner disposing of to others any copies of any or of all of said volumes of Illinois Reports, from volume thirty-two to volume forty-six (both inclusive), and which were heretofore printed by said defendants from or upon the said stereotype plates or the type from which said stereotype plates were made.

And the court having found that the defendants, Van Buren Denslow and Marshall D. Ewell, have heretofore disclaimed any interest in the subject-matter in controversy, and that they have no interest therein, it is further ordered, adjudged, and decreed that they, the said Van Buren Denslow and Marshall D. Ewell, go without day and without costs.

It is further adjudged by the court that the right of the plain-
219 tiff to recover the additional sum of eight hundred ninety-six dollars and nineteen cents as claimed by complainant and referred to in the report of Henry W. Bishop, master in chancery, in case the cost of composition and press-work should be ratably distributed over the whole edition printed of volumes thirty-two to thirty-eight (both inclusive) of Illinois Reports, and also the right of all parties under the cross-bill filed herein, and the rights of all parties to the action of replevin commenced in this court by the plaintiff herein to recover possession of the unsold copies of volume thirty-two to volume thirty-eight (both inclusive), be and are reserved for further consideration and determination on the hearing of the cross-bill.

From which decree the said defendants, Bernard Callaghan, Andrew Callaghan, Andrew P. Callahan, and Sheldon A. Clark, pray an appeal to the Supreme Court, which is allowed, to operate as a supersedeas, upon their filing herein a good and sufficient appeal bond in the penal sum of fifteen thousand dollars, conditioned according to law, with sureties, to be approved by the court.

And it is ordered that they do have thirty days within which to file herein a certificate of evidence.

220 Afterwards, to wit, on the eighteenth day of July, 1885, there was filed in said clerk's office an appeal bond in said entitled cause, which said appeal bond is in the words and figures following, to wit:

Bond.

Know all men by these presents that we, Bernard Callaghan, Sheldon A. Clark, Thomas H. Flood, James E. Callaghan, and

Wilson L. Mead, copartners constituting the present firm of Callaghan and Company, as principals, and John R. Walsh, as surety, all of the city of Chicago, in the county of Cook and State of Illinois, and held and firmly bound unto Eugene B. Myers, his heirs, executors, and administators, in the penal sum of fifteen thousand dollars ($15,000.00); for the payment of which sum, well and truly to be made, we and each of us do hereby, jointly and severally, bind ourselves and our respectives heirs, executors, and administrators.

The condition of the above obligation is such that whereas, on the 9th day of July, A. D. 1885, in a certain cause in the circuit court of the United States for the northern district of Illinois then pending, on the chancery side thereof, in which Eugene B. Myers was complainant and Bernard Callaghan, Andrew Callaghan, Andrew P. Callahan, and Sheldon A. Clark, late copartners under the
221 firm name of Callaghan and Company, were defendants, a decree was rendered in favor of the said complainant and against the said defendants for the sum of eleven thousand seven hundred and sixty dollars and nineteen cents ($11,760.19), together with costs of suit, from which decree the said defendants have prayed for and been allowed an appeal to the Supreme Court of the United States:

Now, if the said Bernard Callaghan, Andrew Callaghan, Andrew P. Callaghan, and Sheldon A. Clark shall duly prosecute their said appeal with effect and if they fail to make their appeal good shall answer all damages and costs and moreover pay the amount of said decree with costs, interests, and damages rendered and to be rendered against them in case said decree shall be affirmed by said Supreme Court, then the above obligation to be void; otherwise to remain in full force and effect.

In witness whereof the parties have hereunto respectively set their hands and seals, at Chicago, this 18th day of July, A. D. 1885.

BERNARD CALLAGHAN. [SEAL.]
SHELDON A. CLARK. [SEAL.]
THOMAS H. FLOOD. [SEAL.]
WILSON L. MEAD. [SEAL.]
JAMES E. CALLAHAN. [SEAL.]
JOHN R. WALSH. [SEAL.]

Approved:
H. W. BLODGETT, *Judge.*

Endorsed: Filed July 18, 1885. Wm. H. Bradley, clerk.

222 On the same day, to wit, on the eighteenth day of July, 1885, the certificate of evidence in said cause was filed in said clerk's office, and is in the words and figures following, to wit:

Certificate of Evidence.

UNITED STATES OF AMERICA, }
Northern District of Illinois, } ss:

In the Circuit Court of the United States. In Chancery.

EUGENE B. MYERS

vs.

BERNARD CALLAGHAN, ANDREW CALLAGHAN, ANDREW P. CALLAHAN, SHELDON A. CLARK, MARSHALL D. EWELL, and V. B. DENSLOW.

Complainant's testimony concerning infringement of volumes 32 to 38, embraced in original bill.

Be it remembered that upon the hearing of the above-entitled cause complainant, to maintain the issues upon his part as to the infringement of volumes 32 to 38, inclusive, of the Illinois Reports, embraced in the original bill of complaint, read in evidence the following depositions:

And thereupon complainant read in evidence the depositions of William E. Foote, Marshall D. Ewell, John D. Adair, Robert Fergus, James B. Bradwell, Edward J. Hill, Eugene B. Myers, and G. L. Barber.

223 In the Circuit Court of the United States for the Northern District of Illinois. In Chancery.

EUGENE B. MYERS *vs.* BERNARD CALLAGHAN *et al.*

Testimony taken before Henry W. Bishop, master in chancery of said court, Monday, the 14th day of October, A. D. 1878.

Present: J. V. Le Moyne, Esq., solicitor for complainants, and J. L. High, Esq., solicitor for defendant-.

WILLIAM E. FOOTE, a witness on behalf of the complainant, being first duly sworn, was examined in chief by Mr. LE MOYNE and deposes and says as follows:

Q. Please state your name, age, residence, and occupation.

224 A. William E. Foote; 51 years; Chicago; a printer.

Q. Have you been engaged in the office of the Legal News; if so, for how long and in what capacity?

A. I think it was two years last July, in the capacity of foreman.

Q. Since you have been there has the Legal News printed any volumes of the Illinois Reports; if so, what volumes and for whom?

A. The Legal News Company printed several volumes of the Illinois Reports for Mr. Callaghan, I know. Whether for Mr. Myers or not I do not know; I do not remember.

Q. What volumes have been printed for Callaghan and Company?

A. I do not know that I could tell you, except one that was brought to my mind by talking about it; that was the 38th. We printed several, but I have not charged my memory with the numbers of the volumes.

Q. Can you ascertain by an inspection of the books of the company—the Legal News Company—what volumes they were?

225 A. I do not know; I never had anything to do with the books.

Q. Is there any way you can refresh your recollection as to what volumes you printed?

A. No, sir; in the first place, I am the poorest man to remember dates and figures in the world, and I did not charge my memory with that at all. I could not tell positively what numbers I printed unless I had the copies before me. I know we printed several—ten or twelve, perhaps, in all—of the Illinois Reports and some Iowa, but what they were I have no idea any more than if we had never printed them.

Q. In setting up the volumes that you printed of the Illinois Reports what copy was used; was it printed or written?

A. Sometimes it was all written and sometimes partly printed and partly written; sometimes we produce the book entire without any changes, called reprints.

Q. In these cases you used the original book to print from, did you?

226 A. Yes, sir.

Q. Have you any of the copy used that you can produce now in connection with your testimony?

A. No, sir.

Q. Do you know what was done with it?

A. I do not. I have quite a large desk that I had made to hold a good deal of copy. I usually put the copy in this place in my desk until it would get full, and when it did I dumped them into the basket and they carried them away and sold them for old paper.

Q. Have you any portion of the 38th volume?

A. I have brought a book with me that the copy was cut from.

Q. Please produce it.

A. Of course, I furnished no copy myself. I had nothing to do with the copy, except to deal it out to the workmen, and, of my own knowledge, of course, I do not know anything of it.

227 Witness produces the book referred to by him in his testimony.

Q. Will you attach this to your deposition as an exhibit?

A. I know nothing about it. It was simply handed to me. I know nothing of it myself.

Q. Have you any objection to having it attached to your deposition?

A. No, sir; I have no objection.

Counsel for the complainant offers in evidence the book produced by the witness, marked Exhibit No. 1.

Objected to by defendants' counsel as incompetent.

Q. On the inside of the cover of this book I wish you to observe there is written: "This is the book brought by Callaghan and Company, Monday noon, July 30th, 1877;" state in whose handwriting that is there, if you know (indicating).

A. It looks like Judge Bradwell's handwriting. It is rather better than his usual handwriting, though.

228 Q. Are you familiar with his handwriting?

A. Well, I saw it frequently—not very familiar with it. He always writes with his type-writer, as a general thing. Occasionally I saw it.

Q. Do you believe that to be his handwriting or not?

A. Well, I do not know. I should not be willing to testify that I knew that to be his handwriting.

Q. Can you fix the date when the Legal News Company printed the 38th volume of the Illinois Reports for Callaghan and Company?

A. No, sir; I do not remember when it was. I could not, from memory, fix the date. We have within two years printed some twelve volumes of law books, I presume, and I never took any pains to fix any of them in my mind at all. The copy has been passed out and been thrown into the waste basket, and had been sold for waste paper. When you ask me a question like that I could

229 not answer it for my life.

Mr. HIGH:

Q. Some of those you printed for Callaghan you say were reprints of Iowa?

A. I could not tell you whether they were for Callaghan or not. It seems to me they were for Callaghan, as near as I can remember. They were entire reprints—books produced entirely—set line for line.

Q. Of Iowa Reports?

A. I think they were Iowa Reports.

Mr. LE MOYNE:

Q. Where did you obtain this book (indicating)? Did you bring it from the office of the Legal News?

A. Yes, sir.

Q. Look at the volume now shown you, marked as Complainant's Exhibit No. 2 of Volume 38, and state whether that book was printed by the Legal News Company and stereotyped (indicating).

A. Well, I could not tell you from my personal knowledge whether this book is or not; but I know we printed the 38th.

230 I see it bears the imprint of the Chicago Legal News Company. I know, of course, of necessity it must have been printed there.

Q. Look at Complainant's Exhibit No. 3, being volume 37 (indicating), and state whether or not that was printed.

A. Yes, sir; I think that was printed by the Legal News Company also.

Q. Can you tell when?

A. No, sir; I cannot.

Q. Look at Complainant's Exhibit No. 4, being volume 33 (indicating), and state whether that was printed by the Legal News Company.

A. I should say it was.

Q. Did you distribute the copy for each of those books?

A. Yes, sir.

Q. From whom did you receive it?

A. From Judge Bradwell. I received all the copy from him.

Q. What was done with the copy after it was set up?

231 A. Well, it was put up in my desk, and from there it entered into a basket, so far as I know, and sold for old paper.

Q. What was the name of the proof-reader?

A. Well, I am one of them.

Mr. MYERS:

Q. Did the author read the proof or did he not?

A. On what?

Mr. LE MOYNE:

Q. On these volumes.

A. If I remember correctly, I read the proof myself. Mr. Ewell read the proof of one of these volumes; that, I think, was read again in page form by Miss Tomlin in the office, and then it came to me to be revised before it went to press—before going into the plate—and then it was sent to the stereotype foundry. It always came to me last.

Q. Did the copy come with it?

A. No, sir; the first time it was read by copy; it was read by copy also in the other room.

Q. Mr. Foote, do you know of the Legal News Company having printed the 37th volume of Illinois Reports for Mr. Myers?

232 A. Well, it seems to me one of the numbers; as I said before, I am very poor at numbers, but it seems to me we printed the 37th volume.

Q. For Mr. Myers?

A. Yes, sir; it seemed to me we did. I hardly ever had anything to keep in memory the numbers of the volumes. I mark it off, the number of the volume or law book. I mark it with Myers at the head of every galley, so I know what it is. From the time the book comes in until it goes out we never look at it. I recollected hearing the numbers mentioned at the time, but I forget.

Q. Do you remember of or know of any of the type that was set up for Mr. Myers' book being used before it was distributed to print a book for Callaghan and Company?

A. No, sir.

Q. Do you know anything about that being done in the office?

A. No, sir.

Q. Have you any more of the remnants of books similar to the one you have produced here in the office?

A. Not that I know of; sometimes we cut the books up and
233 leave only the covers, and then we use the printed copies only because they are handled more easily than they would be left in the book. The book is straight off the cover.

Q. You have no other covers of the books of Illinois Reports similar to this?

A. No, sir.

Cross-examination waived.

Signature waived.

Testimony taken before Henry W. Bishop, master in chancery of said court, Monday, the 14th day of October, A. D. 1878.

MARSHALL D. EWELL, a witness on behalf of the complainant, being first duly sworn, was examined in chief by Mr. LE MOYNE, and deposes and says as follows:

Q. Please state your name, age, residence, and occupation.

A. My name is Marshall D. Ewell; occupation, lawyer;
234 residence, South Evanston.

Q. Did you prepare any volumes of the Illinois Reports for publication for Callaghan and Company?

A. I did.

Q. If so, when and what volumes?

A. I did. Numbers 32 to 36, inclusive.

Q. You did not prepare the 32nd?

A. Yes, sir; the 32nd I prepared.

Q. Did you prepare any more?

A. No; I prepared the 31st, but they subsequently bought it; and 44 and 45, but they were not published. I could not tell exactly the time except by looking at them, and I do not know that I could tell then.

Q. You could tell the year, I suppose?

A. It must have been in the year 1877. I see it is entered in 1877. I think it was all done in the year 1877.

Q. State from what source you procured the material incorporated into the volumes which you prepared. If any of it was pro-
235 cured from the books of the complainant state how much.

A. The opinion of the court I did not touch at all; those were set up from the regular printed book. The head-notes I wrote entire. I got my information from the opinions and from reading the case as printed. I did not depend on the notes or the syllabi as they appeared in the regular reports at all for the statements. I got my information from the printed reports.

Q. When you say the printed reports you mean from the books as published under the name of Freeman?

A. Yes, sir—that is to say, I got most of it from that; some of them were cases — had been reported in earlier volumes. When-

ever that was the case I always went to them, and in quite a good many instances I got the information from these earlier reports.

Mr. HIGH:

Q. Prior to 32?

A. Yes, sir; prior to 32. In quite a number of instances I used those entire.

Mr. LE MOYNE:

236 Q. Did you read any of the proofs of these volumes?

A. I have read the proof, except as to the matter which was printed copy; that I did not touch. The opinions I did not look at. I read the rest.

Q. Were all the volumes prepared by you set up from the books of Myers?

A. Let me understand that question. Do you mean the opinions?

Q. Yes.

A. The opinions were set up from the printed books of Myers.

Q. In preparing these books did you have any information or source of knowledge on the facts stated in the different cases or of the opinions, except the printed volumes of the complainant claimed by the complainant?

A. I did not, except as to those cases which had been reported in earlier volumes, to which I have already alluded. With reference to the index, that was included in one of your former questions. I would state that the index was made up entirely *de novo* by me from the printed syllabus or printed proof of the syllabi.

237 Mr. HIGH:

Q. Of your own?

A. Of my own syllabi.

Q. Who furnished you the volumes of the Illinois Reports used in the preparation of your reports?

A. I got them at Callaghan and Company's store.

Cross-examination waived.

Testimony taken before Henry W. Bishop, master in chancery of said court, Tuesday, the 15th day of October, A. D. 1878.

JOHN D. ADAIR, a witness on behalf of the complainant, being first duly sworn, was examined in chief by Mr. LE MOYNE, and deposes and says as follows:

Q. Please state your name, age, residence, and occupation.

A. John D. Adair; age, 36; residence, Chicago; occupation, a lawyer.

Q. State if you have examined any of the volumes of Illinois Reports as being reprinted for Callaghan and Company, and
238 compared them with any volumes as published by Myers and Chandler.

A. I did.

A. No, sir.

Q. Have you any more of the remnants of books similar to the one you have produced here in the office?

A. Not that I know of; sometimes we cut the books up and
233 leave only the covers, and then we use the printed copies only because they are handled more easily than they would be left in the book. The book is straight off the cover.

Q. You have no other covers of the books of Illinois Reports similar to this?

A. No, sir.

Cross-examination waived.

Signature waived.

Testimony taken before Henry W. Bishop, master in chancery of said court, Monday, the 14th day of October, A. D. 1878.

MARSHALL D. EWELL, a witness on behalf of the complainant, being first duly sworn, was examined in chief by Mr. LE MOYNE, and deposes and says as follows:

Q. Please state your name, age, residence, and occupation.

A. My name is Marshall D. Ewell; occupation, lawyer;
234 residence, South Evanston.

Q. Did you prepare any volumes of the Illinois Reports for publication for Callaghan and Company?

A. I did.

Q. If so, when and what volumes?

A. I did. Numbers 32 to 36, inclusive.

Q. You did not prepare the 32nd?

A. Yes, sir; the 32nd I prepared.

Q. Did you prepare any more?

A. No; I prepared the 31st, but they subsequently bought it; and 44 and 45, but they were not published. I could not tell exactly the time except by looking at them, and I do not know that I could tell then.

Q. You could tell the year, I suppose?

A. It must have been in the year 1877. I see it is entered in 1877. I think it was all done in the year 1877.

Q. State from what source you procured the material incorporated into the volumes which you prepared. If any of it was pro-
235 cured from the books of the complainant state how much.

A. The opinion of the court I did not touch at all; those were set up from the regular printed book. The head-notes I wrote entire. I got my information from the opinions and from reading the case as printed. I did not depend on the notes or the syllabi as they appeared in the regular reports at all for the statements. I got my information from the printed reports.

Q. When you say the printed reports you mean from the books as published under the name of Freeman?

A. Yes, sir—that is to say, I got most of it from that; some of them were cases — had been reported in earlier volumes. When-

ever that was the case I always went to them, and in quite a good many instances I got the information from these earlier reports.

Mr. HIGH:

Q. Prior to 32?

A. Yes, sir; prior to 32. In quite a number of instances I used those entire.

Mr. LE MOYNE:

236 Q. Did you read any of the proofs of these volumes?

A. I have read the proof, except as to the matter which was printed copy; that I did not touch. The opinions I did not look at. I read the rest.

Q. Were all the volumes prepared by you set up from the books of Myers?

A. Let me understand that question. Do you mean the opinions?

Q. Yes.

A. The opinions were set up from the printed books of Myers.

Q. In preparing these books did you have any information or source of knowledge on the facts stated in the different cases or of the opinions, except the printed volumes of the complainant claimed by the complainant?

A. I did not, except as to those cases which had been reported in earlier volumes, to which I have already alluded. With reference to the index, that was included in one of your former questions. I would state that the index was made up entirely *de novo* by me from the printed syllabus or printed proof of the syllabi.

237 Mr. HIGH:

Q. Of your own?

A. Of my own syllabi.

Q. Who furnished you the volumes of the Illinois Reports used in the preparation of your reports?

A. I got them at Callaghan and Company's store.

Cross-examination waived.

Testimony taken before Henry W. Bishop, master in chancery of said court, Tuesday, the 15th day of October, A. D. 1878.

JOHN D. ADAIR, a witness on behalf of the complainant, being first duly sworn, was examined in chief by Mr. LE MOYNE, and deposes and says as follows:

Q. Please state your name, age, residence, and occupation.

A. John D. Adair; age, 36; residence, Chicago; occupation, a lawyer.

Q. State if you have examined any of the volumes of Illinois Reports as being reprinted for Callaghan and Company, and
238 compared them with any volumes as published by Myers and Chandler.

A. I did.

Q. If so, what numbers; and state what examination you have made, and state whether, from the examination you have made, the book of Callaghan and Company is copied in any degree from the corresponding volume of Myers.

A. Those I did examine—many of the syllabi, I remember, were almost identical.

Q. Can you remember what volumes you examined?

A. I do not remember which ones I did examine.

Q. Can you tell by looking at them?

A. Yes, sir; I examined a great many. I examined volumes 34, 35, 36, and 38.

Q. If so, state what numbers, and state what examination you have made, and state whether, from the examination you have made, the book of Callaghan and Company is copied in any degree from the corresponding volume of Myers.

A. I answered that before. They were substantially the same.

239 Q. Was there any similarity in the arrangement of the cases and in the paging of the books between the books as published by Callaghan and those published by Myers?

A. The arrangement of the cases in their successive orders in the books I examined was the same, and the paging was made the same by marginal paging.

Q. State if there was a similarity between the two books in appearance; whether, in your opinion as a lawyer, the books of Callaghan would in any degree supersede or take the place of the books of Myers and Company.

A. There was a similarity in their appearance. They were bound as law books usually are, and, in my opinion as an attorney, they were well calculated to take the place of the Illinois Reports proper.

Cross-examination waived.

It is agreed that the volumes shall be produced as exhibits on the trial without being attached to the testimony.

240 Testimony taken before Henry W. Bishop, master in chancery of said court, Tuesday, the 15th day of October, A. D. 1878.

ROBERT FERGUS, a witness on behalf of the complainant, being first duly sworn, was examined in chief by Mr. LE MOYNE, and deposes and says as follows:

Q. Please state your name, age, residence, and occupation.

A. Robert Fergus; a printer; age 63.

Q. How long have you been living in Chicago and engaged in printing?

A. I have been in Chicago going on forty years engaged in the printing business.

Q. State if at any time in 1877 you saw any volumes of the Illinois Reports being reprinted; if so, when, by whom, for whom, and what copy was being used for the same?

A. In June, 1877, I saw, in Madison, Wisconsin, in the printing office of David Atwood, a leaf, 309 and 310, of volume 35,
241 Illinois Supreme Court Reports, and in the stereotype foundry I saw other parts of the same volume. The copy was that of Freeman's edition, published by Myers, and they told me there that the volume was being reprinted for Callaghan, of Chicago. In the printing office they told me that this volume was being done for Callaghan, the publisher, of Chicago, and other volumes of the same kind.

Answer objected to as incompetent.

Q. Did you see any portion of the book of the 35th volume, as published by Myers, in use there by the printers?

A. The only leaf that I saw was page- 309 and 310.

Q. How was it being used?

A. It was being used as copy for the compositor. There was a piece of manilla paper pasted over the syllabus and a new one written for it. I lifted it up and saw that the one below was crossed out; the printed one was crossed out.

242 Cross-examination by Mr. HIGH:

Q. At whose request did you visit Madison on that occasion?

A. Indirectly, my son.

Testimony taken before Henry W. Bishop, master in chancery of said court, Tuesday, the 15th day of October, A. D. 1878.

JAMES B. BRADWELL, a witness on behalf of the complainant, being first duly sworn, was examined in chief by Mr. LE MOYNE, and deposes and says as follows:

Q. Please state your name, age, residence, and occupation, and if you are an officer of the Chicago Legal News Company.

A. James B. Bradwell; I am fifty years of age the 16th day of last April; occupation, a lawyer; secretary of the Legal News Company.

Q. Did the Chicago Legal News Company publish any volumes of the Illinois Reports for Callaghan and Co.; if so, when and what volumes?

A. They never published any.

Q. Did they print any.

243 A. They did.

Q. What volumes, and when was it done?

A. My recollection is that we printed six volumes of Illinois Reports, but I would not say positively. There might be more and might be less. I do not think there was more. The 33d we printed for Messrs. Callaghan and Co. in 1877.

Q. I ask you to name all that you printed.

A. The 33d, edited by Professor Ewell; the 37th, edited by Professor Denslow; that was also in 1877, and the 38th, by Professor Denslow, in 1877.

Q. Who furnished you the copy from which these books were printed?

A. Different persons.

Q. Name them.

A. Messrs. Callaghan & Co. some of it, Professor Denslow some of it, and Professor Ewell some of it. I could not say which was Mr. Callaghan's.

Q. Was the copy written or printed?

A. Part of it was printed and part of it was written. The copy that Mr. Denslow furnished was all written, I think; every bit of it.

244 Q. How much did he furnish?

A. Well, my recollection is that we only had two books from Professor Denslow; I am not positive about that; that is the best of my recollection now, which I have here; the 37th and 38th and all the copy that Mr. Denslow gave us, according to the best of my recollection, was in writing.

Q. Your recollection is that you furnished all the copy of these two volumes?

A. No; I did not say so. Professor Denslow furnished the head-notes, and I would not say positively, but my recollection is, that he furnished all of the copy for the books, or nearly so, except the opinions; I do not think he furnished any of the opinions, according to my recollection now.

Q. Where did you get them?

A. I got them from Messrs. Callaghan and Co.

Q. What form were they in—written or printed?

A. They were printed?

Q. What was the printer's matter taken from?

A. The volumes of Illinois Reports.

245 Q. Of the volumes published by whom?

A. I do not know. They were the regular edition of the Illinois Reports. I do not remember who published them now.

Q. Examine Complainant's Exhibit No. 1 and state if that is the book, or the remnant of one, of the volumes from which the opinions were taken (indicating).

A. Yes, sir; that is the remnant of one of the books that was handed to us for copy, and at or about the same time we got a book or books from Mr. Myers. There had been some mistake in another office in giving a wrong book. There was two copies of the report printed, and I was particular when it came in that they might not get it mixed with any other and I marked it. This was the one that we used to set up when it was brought (indicating). I threw this book away in the waste-paper basket after it was used and supposed it was all gone up. As near as I can understand about

246 it from inquiry, the boys in the office picked it up, thinking it might be of some use, and put it on my desk, and that is the way it came to be known that it was there; else I thought it had been destroyed.

Q. Look at the writing on the inside of the book and state whose writing that is (indicating).

A. That is mine.

Q. Read what is there written.

A. "This is the book brought by Callaghan and Co. Monday noon, July 30th, 1877." It is the 38th. The reason that I put the time specially on it was we were under a contract to get this out within a certain time.

Q. That was the volume of the Illinois Reports furnished you by Callaghan and Co. from which you took the opinions and the printed matter that went into the volume you made for them, was it?

A. Yes, sir. I cut the opinions out myself.

Q. They furnished you the book to use in that way?

247 A. Yes, sir; they furnished the book.

Q. Did they furnish you a copy of the Illinois Reports as published by Myers or Freeman of the other volumes that you printed for them?

A. Yes, sir; they or some parties in the office. I cannot just remember who b-ought it. However, we did not furnish any copy. I would like to say in regard to this book I should not have brought it at all or given it up unless by a written order, by written notice to produce it, or a subpœna.

Q. You say you would not have produced it unless you had been required to do so?

A. By the power of the court, which I could not resist. No, sir; I should not have done it.

Q. It was not produced willingly, then—voluntarily?

A. No, sir; certainly not; because I would not produce any copy from my office for anybody voluntarily.

Q. At the time the notice was served on you to retain that

248 book was not that book full of the copy which had been used by the printers?

A. No, sir.

Q. Which had been place in the covers after having been cut out and used?

A. It never was in the book, sir; not a word of it. The book is just as it was then.

Cross-examination waived.

Testimony taken before Henry W. Bishop, master in chancery of said court, Tuesday, the 15th day of October, A. D. 1878.

EDWARD J. HILL, a witness on behalf of the complainant, being first duly sworn, was examined in chief by Mr. LE MOYNE, and deposes and says as follows:

Q. Please state your name, age, residence, and occupation.

A. Edward J. Hill; residence, Chicago; age, 45; occupation, attorney-at-law.

Q. State if you have been in any degree familiar with the

249 Illinois Reports; if so, for how long and what examination you have made of volumes 32 to 46; whether you have seen the books as published by Callaghan and Co., volumes 32 to 39, and whether you have made any examination of the books of Callaghan and Co. in comparison with those as published by Meyers or Myers

& Chandler; if so, how much of an examination have you made, of what volumes, and when did you make it?

A. The original volumes as published, mentioned from 32 to 37, I took one by one as they were published.

Q. Of whose edition?

A. Of the original edition by Myers, and then went to Milwaukee and took them from time to time as they were issued from the press. I was quite familiar with the original edition. Subsequently the other volumes I purchased after I came to Chicago, up to and including 39, I think, and 46. I had occasion to use them continually ever since they were published until the present time. I examined the edition published by Callaghan and Co., edited—
250 some of them—by Ewell and some by Denslow, at various times from the time that they were issued from the press. I examined them particularly at the request of Mr. Myers about the time this suit was commenced, I think, or a little while before.

Q. State whether there is any similarity between the volumes as published by Callaghan & Co. and the corresponding numbers as published by Myers or Myers and Chandler; if so, state in what the similarity consists.

A. Practically I found them interchangeable. I could use the one as well as the other. For example, the references to the 34th of Illinois in any of the law books or briefs of counsel I could find quite as well in the edition by Callaghan as in the edition by Myers, and the same fact as to each of the other volumes of the reports named.

Q. State if there was any similarity in the arrangement of the cases and the paging.

A. The paging was substantially the same in either edition.
251 The reports of cases—the statement of the case—are oftentimes abridged and changed, but substantially the same matter, and an occasional change in the phraseology. The head-notes were changed considerably, as a general thing. The head-notes in the new edition, by Callaghan and Co., were perhaps in clearer and more concise language than in the original report.

Q. How was the paging arranged in the Callaghan and Co. edition?

A. I do not remember as to the arranging of the pages. I think there were breaks between the pages, so that the original paging in the original edition was preserved in the new edition.

Q. State, from the examination you made and comparison of the two books, whether or not one book was made from the other.

Objected to as incompetent.

A. My opinion is that they were substantially copies, except as to the head-notes.

Q. Have you had some experience as a publisher of law books?

252 A. I have some.

Q. If so, for how long?

A. For about ten years.

Q. What, in your opiuion, would be the effect of the publication of the books of Callaghan and Co. on the sale of the books of Myers and Co.?

A. I could hardly answer that question.

Q. Would one book, in your opinion, supersede or take the place of the other or be sold instead of the other?

A. So far as I am concerned individually I would as lieve have the one as the other. It fills the place—the new edition fills the place—of the old very well. I should suppose that they might be sold in sets and volumes, precisely the same as the original.

Q. Would the publication of the edition of Callaghan and Co. tend to injure the sale of the other?

A. I should think it would.

Cross-examination by Mr. HIGH:

253 Q. Did not you find in the edition of Callaghan and Co., on the back of each of the volumes, from 32 to 38, inclusive, in legible type, the name of Ewell or Denslow, as the case might be, in lieu of the name of Freeman, which appears on the back of the original edition—on the label at the bottom?

A. I did, sir.

Q. Did you not find on the title page of each of the volumes as published by Callaghan and Co., in lieu of "Reported by Norman L. Freeman," the words "Re-reported and re-edited by Marshall D. Ewell," or by "V. B. Denslow," as the case might be, with the respective volumes?

A. I did.

Q. Did you not find on the title page of the same volumes published by Callaghan and Co., in lieu of the name of "E. B. Myers" or "Myers and Chandler," as publishers, at the bottom of the page, the name of "Callaghan and Co.?"

A. I did.

254 Q. Did you not find the year 1877 at the bottom of the title page in each of the volumes of Callaghan and Co. instead of any other year that may appear on the original edition?

A. Some of the volumes. I do not remember whether it was 1877 or some other year.

Q. Did you not find on the second page—that is to say, the reverse of the title page—of each of the volumes published by Callaghan and Co. the printed statement of the entry according to act of Congress, in the office of the Librarian, at Washington, by Callaghan and Co., instead of entered by E. B. Myers or Myers & Chandler, as in the original edition?

A. I did.

Q. Did you not find throughout the different volumes published by Callaghan and Co., before the head-notes of the different cases, a condensed statement, usually in italics, of the contents of the
255 different head-notes in brief which does not appear in the original edition?

A. That is characteristic of the "38" and "33."

Q. So far as you recollect, is it not characteristic of all the volumes of the Callaghan edition?

A. I could not say now without examining them again.

Q. Did not you find in the different volumes, as published by Callaghan and Co., notes, with references to adjudicated cases, appended to very many of the opinions and decisions which don't appear in the original volumes?

A. I did.

Q. Are not the points to which I have just called your attention, in your opinion as a lawyer or as a publisher, points of dissimilarity from the original edition which would strike the attention of a lawyer to indicate a different edition from Myers' edition?

A. They are.

Q. Would not a lawyer or an ordinary purchaser, a person of average intelligence, using the edition of Callaghan and Co.
256 recognize at a glance on taking up the edition with the name of Ewell or Denslow on the back that it was a different volume from the Freeman volume?

A. I should; I cannot say what others might do.

Redirect examination by Mr. LE MOYNE:

Q. With the exception of the changes you have mentioned, is not the name of the report on the back of the title page in the edition of Callaghan and Co. made in very close imitation of those of Myers' books?

A. They look very much alike.

Testimony taken before Henry W. Bishop, master in chancery of said court, Tuesday, the 15th day of October, A. D. 1878.

EUGENE B. MYERS, a witness on behalf of the complainant, being first duly sworn, was examined in chief by Mr. LE MOYNE, and deposes and says as follows:

257 Q. Please state your name, age, residence, and occupation.

A. My name is Eugene B. Myers; of lawful age; occupation, law-book seller.

Q. Are you the complainant in this suit?

A. Yes, sir.

Q. State if in 1876 and 1877 you were the owner of any of the copyrights of the Illinois Reports; if so, what volumes.

Objected to as incompetent.

A. I was owner of volumes 32 to 46, inclusive.

Q. State if you had any stereotype plates of any of said volumes; if so, state of what volumes you had the plates in 1876 & 1877.

A. I had the plates of volumes 37 to 46, inclusive.

Q. State what was the value of the copyright per volume of each of the volumes from 32 to 46, in the spring of 1877.

A. The copyright without the plates?

Q. Yes, sir.
258 A. From $6.00 to $7.50.
Q. Per volume?
A. Per volume. I never paid less than $6.00 for the preparation of similar work.
Q. What were the plates that you owned worth per volume?
A. An average of $7.75.
Q. State if Callaghan and Co., the defendants in this suit, had any knowledge of your claim to the copyright of the volumes in question in this suit from January to July, 1877?
A. They were aware that I owned the copyright—had a copyright.
Q. State if any application was made by them to you to purchase the copyright of said volume. If so, when and what was the proposition made by them to you?
A. The first application was made in 1876, when they stated that they had purchased the copyrights of volumes one to thirty, inclusive, and wanted to know if I would reprint thirty-two and
259 afterwards, which were out of print, and if not, would I sell the copyright to them. Subsequently, in the latter part of the year 1876, we had several interviews regarding the sale by me and the purchase by them of my copyrights and the stereotype plates of volumes 32 to 46, inclusive.
Q. Were there any subsequent negotiations; if so, when and with what result?
A. Well, at various times down to the summer of 1877, as late as as June, 1877, the values were considered and talked about. A proposition was made by Callaghan and Co. to me first at $4,000, and subsequently at $3,000, which was declined, as I did not deem it a sufficient price for the property.
Q. Was there any arrangement of any kind made between you and them on the subject; if so, what was it?
A. No arrangement was made. They threatened if I did not accept their offer that they would proceed to reprint the
260 books.
Q. State whether they have reprinted any of them; if so, what volumes?
A. They have reprinted volumes 32, 33, 34, 35, 36, 37, 38, 39, and 43—that is, so far as I know.
Q. How many of those volumes, if any, were reprinted by them before this bill was filed?
A. Volumes 32 to 38, inclusive.

Defendants' counsel objects to any testimony concerning volumes later than 38.

Q. State if they have indicated an intention to reprint other volumes of which you claim a copyright. If so, what has been done by them in this respect?

Defendants' counsel objects to the question as incompetent and irrelevant.

Q. So far as you recollect, is it not characteristic of all the volumes of the Callaghan edition?

A. I could not say now without examining them again.

Q. Did not you find in the different volumes, as published by Callaghan and Co., notes, with references to adjudicated cases, appended to very many of the opinions and decisions which don't appear in the original volumes?

A. I did.

Q. Are not the points to which I have just called your attention, in your opinion as a lawyer or as a publisher, points of dissimilarity from the original edition which would strike the attention of a lawyer to indicate a different edition from Myers' edition?

A. They are.

Q. Would not a lawyer or an ordinary purchaser, a person of average intelligence, using the edition of Callaghan and Co.
256 recognize at a glance on taking up the edition with the name of Ewell or Denslow on the back that it was a different volume from the Freeman volume?

A. I should; I cannot say what others might do.

Redirect examination by Mr. LE MOYNE:

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A. Yes, sir.

Q. State if in 1876 and 1877 you were the owner of any of the copyrights of the Illinois Reports; if so, what volumes.

Objected to as incompetent.

A. I was owner of volumes 32 to 46, inclusive.

Q. State if you had any stereotype plates of any of said volumes; if so, state of what volumes you had the plates in 1876 & 1877.

A. I had the plates of volumes 37 to 46, inclusive.

Q. State what was the value of the copyright per volume of each of the volumes from 32 to 46, in the spring of 1877.

A. The copyright without the plates?

Q. Yes, sir.
258 A. From $6.00 to $7.50.
Q. Per volume?
A. Per volume. I never paid less than $6.00 for the preparation of similar work.
Q. What were the plates that you owned worth per volume?
A. An average of $7.75.
Q. State if Callaghan and Co., the defendants in this suit, had any knowledge of your claim to the copyright of the volumes in question in this suit from January to July, 1877?
A. They were aware that I owned the copyright—had a copyright.
Q. State if any application was made by them to you to purchase the copyright of said volume. If so, when and what was the proposition made by them to you?
A. The first application was made in 1876, when they stated that they had purchased the copyrights of volumes one to thirty, inclusive, and wanted to know if I would reprint thirty-two and
259 afterwards, which were out of print, and if not, would I sell the copyright to them. Subsequently, in the latter part of the year 1876, we had several interviews regarding the sale by me and the purchase by them of my copyrights and the stereotype plates of volumes 32 to 46, inclusive.
Q. Were there any subsequent negotiations; if so, when and with what result?
A. Well, at various times down to the summer of 1877, as late as as June, 1877, the values were considered and talked about. A proposition was made by Callaghan and Co. to me first at $4,000, and subsequently at $3,000, which was declined, as I did not deem it a sufficient price for the property.
Q. Was there any arrangement of any kind made between you and them on the subject; if so, what was it?
A. No arrangement was made. They threatened if I did not accept their offer that they would proceed to reprint the
260 books.
Q. State whether they have reprinted any of them; if so, what volumes?
A. They have reprinted volumes 32, 33, 34, 35, 36, 37, 38, 39, and 43—that is, so far as I know.
Q. How many of those volumes, if any, were reprinted by them before this bill was filed?
A. Volumes 32 to 38, inclusive.

Defendants' counsel objects to any testimony concerning volumes later than 38.

Q. State if they have indicated an intention to reprint other volumes of which you claim a copyright. If so, what has been done by them in this respect?

Defendants' counsel objects to the question as incompetent and irrelevant.

A. They have, and had before the filing of this bill, announced by their advertisements the republication to the 46th, inclusive.

Q. State whether these books are offered for sale by Callaghan and Co.

A. They are.

261 Q. State whether they are offered as part of the set of Illinois Reports in connection with other reports.

A. They are offered in full sets of Illinois Reports and separately.

Q. Have you examined the books of volumes 32 to 38, as published by Callaghan and Co., and compared them with the books of which you claim the copyright. If so, state if the books of Callaghan and Co. are similar to yours.

A. I have examined and compared the volumes published by them with those which were published by me, and find them very similar.

Q. How long have you been a publisher and seller of law books in Chicago?

A. Over 18 years.

Q. State whether the books of Callaghan and Co. are offered and sold in this market in place of your books or are they purchased by persons who already have your books.

A. They are offered and sold by Callaghan and Co. in place of my books.

262 Q. State what, if anything, has been done since these books were published by the defendants to supersede the use of your books with the books published by them.

A. They have been selling them.

Q. Advertising them?

A. Advertising and selling them.

Q. How many copies of the reports in question had you at the time this suit was commenced—from 32 to 46?

A. From thirteen hundred to fifteen hundred copies.

Q. What was the value per copy of those reports?

A. An average of four dollars and fifty cents a volume.

Q. Have you at any time reprinted any of the volumes of which you claim a copyright; if so, when, and what volumes?

A. I reprinted volume 46 in 1876. I reprinted 37 and 38 in the summer of 1877, and intended to reprint the others during the same year, under the advice of the reports, and so announced it.

Q. When?

A. In the month of March, 1877.

Q. How?

263 A. By a circular advertisement.

Q. Can you produce a copy of that circular?

A. I can produce a copy of one circular; it was printed in the month of February, 1877, and was mailed about March 1st, 1877. (Produces printed circular.)

Complainant's solicitor offers in evidence the printed circular produced by witness, and the same is hereto annexed and marked Complainant's Exhibit No. 1.

Q. When you say these circulars were mailed, to whom were they mailed?

A. That circular was mailed to the book trade generally; the others were to the profession.

Q. When was that issued—the other one?

A. About the same time.

Q. Have you a copy of that?

A. I have not.

Defendants' solicitor objects to the testimony relating to any other circular as incompetent.

Q. When did you begin work on the volumes you are publishing, 37th and 38th?

264 A. 38 in May, and 37 about the 1st of July. I reprinted 38 before 37. I find on referring to my memorandum that volume 38 was commenced in the month of April and volume 37 in the month of May, 1877. Volumes 39 to 45 were stereotyped previously.

Cross-examination by Mr. HIGH:

Q. In your examination-in-chief you have spoken of certain conversations with the defendants as early as the year 1876 concerning the reports in question. About what months did these conversations begin, as you now recollect?

A. I do not remember the month.

Q. Do you recollect a conversation upon that subject with Andrew Callaghan, one of the defendants, about the month of November, 1876?

A. I do not remember the month. I had a conversation with him in that year.

Q. Some time during the fall or early in the winter of that year?

265 A. I presume two or three times. It was after they bought the early volumes.

Q. Is it not true that about the month of November, 1876, Andrew Callaghan came to you, and that an interview ensued with reference to the republication of the volumes then out of print?

A. Very likely.

Q. Did he not then state to you, in substance, that they desired you to go on with the republication of the volumes out of print, and that unless you did so they would be compelled to do so to supply the trade?

A. I do not remember that part.

Q. You have no recollection of that?

A. No; I remember his saying that they should reprint all Mr. Freeman's volumes unless he submitted to their terms.

Q. Did you in any interview with Andrew Callaghan, in the month of November, 1876, say to him, in substance, that you would sell the defendants all your interest in volumes 32 to 46, in-

266 clusive, including your alleged copyright, stock in trade, stereotype plates, and volumes on hand for seven thousand dollars?

A. I do not think I did; I know I did not at that time.

Q. What, if anything, was said to him by you on that subject at that time?

A. I think I said I would entertain a proposition from them for the purchase.

Q. Did not you yourself at that time make a definite proposition?

A. No, sir; I did not; for the reason that I had a verbal contract with the reporter not to sell these reports or copyrights at any price without his consent.

Q. Do you mean to say that as early as the month of November, 1876, Andrew Callaghan had not notified you that unless you republished the volumes out of print they would be compelled to do so to supply the trade?

267 A. I do not remember; it is possible. There was a great deal of talk and threatening going on as to what they would do; I think it is probable he said so.

Q. Did you not, in an interview with Andrew Callaghan, about the month of November, 1876, say to him, in substance, that you would not reprint volumes 32 to 38 and give as your reason that you had already reprinted volume 46, which had not been a paying investment?

A. I do not remember that conversation; I may have said that 46 had not yet paid me; I guess I did.

Q. Did you not in the interview say to him that you would not reprint volumes 32 to 38?

A. At that time I would not.

Q. Did you not say to him you would not?

A. I very likely said to him I would not reprint them at that time.

Q. What else, if you recollect, transpired?

A. If you will ask me a question I will try to answer.

Q. Have you any recollection of anything else that was said by either of you at that time?

268 A. You refer to a conversation in the month of November; I do not remember November, December, or October.

Q. Do you recollect of an interview with Andrew Callaghan about the month of February, 1877, concerning the republication of these reports?

A. I think we had a conversation about every week during the month, all through the winter of 1876 and 1877.

Q. Do you recollect a conversation in the month of February, 1877?

A. What conversation?

Q. With Andrew Callaghan, concerning the republication of volumes 32 to 38?

A. I do not now. See if you can refresh my memory from his affidavit. I know there were negotiations going on.

Q. Do you recollect any interview with Andrew Callaghan in your store in the month of February, 1877, concerning the republication of these reports?

A. I think he was in there.

Q. A conversation with you upon that subject?

A. Very likely.

269 Q. Do you recollect that at such an interview he said to you, in substance, that their firm would pay you the sum of five thousand dollars for all your alleged interest in the copyrights of 32 to 46, inclusive, with the stock in trade, stereotype plates, and volumes on hand?

A. He made a verbal proposition, which I asked him to put in writing, and he declined to do so.

Q. Was that proposition five thousand dollars for the property mentioned?

A. I do not remember the amount. I think it was five thousand dollars that he offered.

Q. What reply, if any, did you make to his proposition?

A. I told him I would take it under consideration.

Q. Have you been a subscriber to the Chicago Legal News since it has been published?

A. I do not think I ever subscribed, but I think it has been sent to me.

Q. Did you receive it during the year 1877?

A. I presume I did.

270 Q. Do you recollect a conversation with Andrew Callaghan some time in the latter part of February or early in March, 1877, in which you told him, in substance, that you had seen in the Legal News an advertisement announcing their proposed reprint of volumes 1 to 38 of the Illinois Reports?

A. I do not remember ever saying so to him.

Q. Do you say you did not say so to him at that time?

A. I do not think I ever did. I am pretty positive I never said so to him at that time.

Q. Do you recollect an interview with Andrew Callaghan, in the early part of March, 1877, in which a conversation was had between you concerning the republication of these reports?

A. We likely had a conversation. I do not remember the date, however.

Q. Do you recollect that in an interview with Andrew, in the month of March—the early part of March, 1877—you stated to him that you would furnish to the defendants copies of your volumes 39 to 46, inclusive, in sets, at the same price at which they

271 would furnish to you for your trade copies of their proposed reprint of volumes 1 to 38, inclusive?

A. I remember of proposing to furnish them my volumes at the same price at which they would furnish me the volumes which they had already reprinted, which was previous to the 31st volume.

Q. When was that proposition made?

A. Whatever volumes they had issued previous to that time.

Q. Was that in the early part of March, 1877?

A. I do not remember.

Q. Is it not true that in the fore part of March, 1877, you proposed to Andrew Callaghan that you would furnish complete sets of your

volumes 39 to 46 at the same price per copy for their trade at which they would furnish volumes 1 to 38, inclusive, for *their* trade?

A. No, sir; I never included a volume after 30, for they had not been reprinted. I certainly would not trade for a thing that had not been produced.

272 Q. Did you not know as early as the month of March, 1877, that they were going to reprint volumes 1 to 38, inclusive?

A. They threatened to do so.

Q. Did not Andrew tell you as early as the month of February, 1877, that they were arranging to reproduce volumes 1 to 38, inclusive?

A. He told me they had announced the republication of the current volumes of the Illinois Reports.

Q. Where did you see that announced?

A. I saw a large flaming circular sent out to the profession.

Q. When did you see it?

A. February or March, 1877. I have got the circular now.

Q. Did you ever at any time in the month of March, or at any other time in 1877, say to Andrew Callaghan that you would sell them complete sets from 39 to 46, inclusive, at the same price at which they would furnish your reprints from 1 to 38, inclusive?

273 A. The reprints of the volumes which they owned? I did.

Q. What did you say to him at that time, and when?

A. I answered that question a moment ago.

Q. Repeat it again.

A. I proposed to sell them my volumes at the same price at which they would sell me the volumes which they proposed to reprint of those which they had purchased the copyright of which were previous to the 31st volume.

Q. When did you propose that to them?

A. During this interview.

Q. Which interview—at what time?

A. Late in the winter or early in the spring of 1877.

Q. Do you know George W. Beck?

A. Yes, sir.

Q. A salesman in the employ of Callaghan and Company?

A. Yes, sir.

Q. How long have you known him?

A. Probably two years—maybe longer.

Q. Do you recollect Mr. Beck coming to you in the latter part of March, 1877, with a proposition from the Callaghans concerning an exchange of volumes of the Illinois Reports?

274 A. I do, sir.

Q. Do you recollect what was said by both of you at that interview?

A. He said that their house had perfected an arrangement with Mr. Freeman, the reporter, for the exclusive sale of his reports to the trade, and that they should charge me $3.50 per volume, which

was the reduced price made by the reporter. I told them that I would not sell any.

Q. What else was said? Go on and repeat the substance of the interview as near as you can recollect it.

A. Well, I think it was at a subsequent interview, at which time he proposed to sell me Mr. Freeman's volumes or exchange them for mine—for those published by me—volumes 39 to 46, which were in the market at the same price.

Q. That was at a subsequent interview?

A. Well, yes—the same week, probably.

Q. Now, let us complete the first interview with Mr. Beck.

275 Have you stated all that you recollect in the first interview with Mr. Beck?

A. I think I have, unless you refresh my memory from his affidavit.

Q. Did not you state to Mr. Beck in substance at your first interview with him in the latter part of March, 1877, that you would furnish Callaghan and Company with such of your volumes 39 to 46, inclusive, at the same price per copy at which they would furnish you their reprints?

A. Their reprints of volumes previous to volume 30. All our conversations had those volumes in view.

Q. Do you recollect of using these words to him with reference to volume 30 of their reprints?

A. In speaking of the volumes that they owned.

Q. Did not you use the term "their reprints," and make the proposition on the basis that they were to be reprints?

A. Certainly; they had reprinted, or were proposing to reprint, volumes 19 to 30, inclusive.

276 Q. Don't you know that they proposed at that time to publish volumes 19 to 38, inclusive?

A. Only as they threatened me to compel a trade.

Q. Did not Mr. Beck decline your proposition at that interview?

A. I do not remember.

Q. Did not you then propose to him at that interview that you would effect a change upon the basis of giving them sets of your volumes 39 to 46, inclusive, at the same price per copy at which they would furnish you volume 47 and the subsequent volume of the series, and did he not carry that proposition back to Callaghan and Company?

A. I stated in the previous answer to that effect; but in all our conversations no reference was made to volumes 32 to 46, inclusive.

Q. But you did in this first interview; afterwards proposed to him that you would exchange upon the basis I have just stated—your volumes 39 to 46 at the price at which they would furnish you the volumes 47 to the end of the series?

277 A. Only for the volumes owned by Callaghan and Company and the volumes owned and published by the reporter, commencing at 47.

Q. Did you limit it to Mr. Beck in that conversation in any such way as you now state?

A. How is that?

Q. Did you limit the question of the reprints or the exchange in that conversation with Mr. Beck in any such way as you now state?

A. I did most certainly.

Q. After you had made your proposition to Mr. Beck concerning the reprints, and after he had declined it, did not you then make a new proposition to him in substance, at the same interview, to furnish them volumes 37 and 39 to 46, inclusive, at the same price at which they would furnish you volumes 47 to the end of the series?

A. I think I stated that as the proposition in a former answer.

Q. Did not he then carry that proposition back to the Callaghans?

278 A. I do not know where he carried it.

Q. Did he not leave you for that purpose and afterwards return to you with an answer?

A. He probably did; I cannot say positively.

Q. Did not you then conclude an agreement with him when he came back to you from the Callaghans or wherever he went to the effect that you would furnish them volumes 39 to 46, inclusive, at the same price per copy as they would furnish you volumes 47 to the end of the series?

A. I do not remember distinctly about volume 47, but it is my impression, as I stated before, that I offered to pool.

Q. In the way suggested by my last question?

A. By my answer to your former question.

Q. Did you not, in substance, then conclude the interview with Mr. Beck, as the representative of the Callaghans in this interview in the last of March, 1877, to the effect that you would furnish them 39 to 46 at the same price as they would furnish you 47 to the end of the series?

279

A. If you will postpone that question and allow me to refer to my books I can tell you just what I did sell to him these books for.

Q. Have you any recollection on that point now without refreshing your memory by referring to your books?

A. I would not state it from recollection, because by referring to my memorandum book I can tell exactly; my recollection is that I sold him some volume at a reduced price.

Q. Was not that reduced price the price at which they on their part would furnish you volumes 47 to the end of the series?

A. Now I recollect that he agreed to sell me Freeman's volumes 47 and after at $3.25 a volume.

Q. Did you not on your part at the same time agree to sell them volumes 39 to 46 at the same price?

A. Not at that time; whatever that price was I can show

280 by the charge made at the time for volumes which he purchased.

Q. Did not you, as a matter of fact, immediately upon the concluding of the interview with Mr. Beck furnish him with three sets of volumes 39 to 46, inclusive?

A. I think I did; that is the charge that I have allusion to, which by referring to my books I can tell just what the price was.

Q. Was not that sale made, as a matter of fact, under the arrangement that you had just concluded with Mr. Beck, whatever the arrangement was?

A. If you allude to the volumes which Callaghan and Company owned and the volumes published subsequently to volume 47, that was the arrangement, I presume.

Q. Was not the arrangement limited entirely to the volumes on their part from 47 down to the end of the series?

A. I do not think it was. Well, it is possible that was the arrangement.

281 Q. How long was that arrangement acted upon that was made by you with Mr. Beck, the representative of the Callaghans?

A. Until Mr. Andrew P. Callaghan came in and accused me of selling Mr. Freeman's volumes at less than $3.50 a volume.

Q. How long a period was that?

A. I guess about a week.

Q. While the arrangement lasted did not you repeatedly sell to the Callaghans under that arrangement sets of your volumes from 39 to 46?

A. I do not remember; I can tell by referring to my books.

Q. What is the best of your recollection upon the point?

A. The best of my recollection, I think they had no more at that time.

Q. At what time?

A. At the time this sale was made; within a week.

Q. Did not they have within a period of three or four weeks thereafter sets of 39 to 46 from you?

A. My recollection is that it was not as long as that.

282 Q. Did not they get additional sets from you from time to time after the first purchase of the three sets by Mr. Beck?

A. I do not remember positively; I think they got a set.

Q. After that first purchase was made?

A. I am not sure.

Q. Do you recollect an interview with Andrew Callaghan in the month of June, or thereabouts, 1877, concerning the republication of those reports?

A. Yes, sir.

Q. Where was that interview held and who were present?

A. It was first held between Mr. Bernard Callaghan and myself in my store.

Q. Did you not go to the store of Callaghan and complete the interview and was not Bernard or Andrew Callaghan present with you?

A. Yes, sir.

Q. State, if you please, all that was said upon both sides at that interview, as near as you can recollect.

283 A. They were very anxious to buy my copyrights of 32 to 46, including the stereotype plates, and the stock on hand, bound and unbound, and during the negotiation offered me four or five thousand dollars. The subject of re-reporting and pub-

lishing, as they proposed to do it, in order to avoid my copyright—they claimed that they had a way of doing it by which they could avoid my copyrights, and stated that it could be done for $150.00 a volume. The amount of composition and the expense of stereotyping each volume was calculated upon in their way and in the manner which they could do it, and they endeavored to convince me that they could reproduce the volumes at about an expense of $700.00, exclusive of paper, press-work, and binding. I endeavored to show them that it would be cheaper to purchase my interest in the volumes owned by me and produce an exact reprint, which would be more satisfactory to the bench and bar.

Q. Are you giving the language?

A. I am giving the language which I used at that time.

Q. Go on, giving the language used on both sides as near as you recollect it.

284 A. After a considerable negotiation I withdrew that, without accepting their proposition.

Q. Did you not in that interview say to the Callaghans that you would furnish them sets of 39 to 46, inclusive, at the same price per copy at which they would furnish you their volumes, and did not Mr. Bernard Callaghan reply to that by asking you what you meant by their volumes?

A. I do not remember of that. I do remember that I proposed to pool my volumes with those which they had reprinted at the same price.

Q. Don't you remember of replying to Mr. Bernard Callaghan that you meant by their volumes their reprints, including all that they were reprinting?

A. No, sir. I will answer, as I did before, that all conversation related exclusively and was meant to apply to the volumes which they owned.

Q. Never mind what was meant; what did you say to him upon that point?

A. That is what I said.

285 Q. Did not you say to him, in substance, that you meant by their volumes all of their reprints?

A. I did not.

Q. Did you say anything of that import to him?

A. I have stated before that all propositions which I made for an exchange applied to the volumes which they owned and the copyright of which they claimed they had purchased.

Q. Did not you at this interview at that store, in the month of June, say to them that you would sell to them your entire interest in the copyrights of 32 to 46, inclusive, and the stereotyped plates, stock on hand, and of volumes in store for $7,000?

A. I did tell them that I would sell them for $7,000 rather than be continually quarreling over the Illinois Reports.

Q. What reply, if any, did they make to your statements?

A. Their reply to that and also to the proposition which I made to pool was this: That they did not desire to pool; that it was their intention to purchase and control the entire set of Illinois Re-

286 ports, and that if I did not accept their proposition they would not renew it, but would proceed to republish the volume owned by me; that there was a way of doing it by which they could avoid my copyright. I stated repeatedly at that interview that they could not reprint my volumes without infringing. They told me that they had a way and could do it; could hire a man to do it for about $150 a volume, and that they had a man engaged on that book. They used every threat nearly that you could bring about to coerce me into selling property which I considered worth from 10 to 15 thousand dollars for about one-third of its value.

Q. When you say they used every threat will you be kind enough to repeat the language which they used?

A. Well, if they did this as they intended to do my property would not be worth anything.

Q. Did Mr. Bernard Callaghan at that interview say to you that they were then reprinting volumes 32 to 38, inclusive?

287 A. I think they had issued or were about to issue one volume. I am not certain; at least they said they were.

Q. What did Bernard Callaghan say to you at that time with reference to their reprinting volumes 32 to 38?

A. He said if I did not sell they would reprint them.

Q. Did he not say to you that they were then reprinting volumes 32 to 38?

A. Very likely; he said a good many things.

Q. Don't you recollect that he then told you they were reprinting volumes 32 to 38?

A. They contemplated it.

Q. Did he not tell you at the June interview that they were reprinting 32 to 38?

A. If he did, I believe he was lying.

Q. Did not he tell you at this interview in June to which you testified that they were then reprinting volumes 32 to 38?

A. That is rather broad.

Q. Will you answer the question?

A. I do not think he did.

288 Q. Will you be positive upon that point? Did not he in the presence of Andrew Callaghan at that June interview say that they were reprinting volumes 32 to 38?

A. I think he said that they were. I think they both said that they were reprinting them in a way which would avoid my copyright.

Q. Don't you know as a matter of fact that one of their reprints had already appeared prior to the June interview?

A. I believe the 32nd was published.

Q. Had not you seen it and purchased a copy of it prior to this June interview?

A. I purchased a copy as soon as I found it was issued.

Q. Did not you purchase copies of their reprints from time to time as fast as they were reissued?

A. I did; for the purpose of comparing them.

Q. Then your best recollection is that prior to this June interview you had already bought a copy of 32, the first of their reprints which had appeared — to the June conversation?

289 A. I am not positive, but I think I had.

Q. Did not they then say to you—did not Mr. Bernard Callaghan then say to you at this June interview that they would pay you for your alleged interest in the copyrights from 32 to 46, inclusive, with your stock in trade, stereotyped plates, and volumes on hand $5,000, less what it had already cost them for re-editing the reprints of 32 to 46, inclusive, or words to that effect?

A. I do not remember that.

Q. Have you any recollection whatever upon that point, as to his making a statement of that import?

A. It is possible that he said so.

Q. Have you any recollection that he did say so?

A. I would not be positive that he did or did not.

Q. Don't you recollect that at that interview he did make the proposition to you in dollars and cents as to the amount they would pay you for the property I have mentioned and that from

290 that amount was to be deducted the amount of the expenses which they already had incurred in the way of printing, editing, and stereotyping volumes 32 to 38?

A. I do not remember. It is possible that he did. We had several interviews. They kept coming to me constantly to purchase my interest.

Q. I am talking about the June interview; confine yourself to that.

A. They came to me constantly to purchase my interest.

Q. Confine yourself to the June interview in your store, when Bernard and Andrew Callaghan were present. I will ask you again at that time and place did not Bernard Callaghan propose to you that they would give you a specified sum in dollars and cents for the property named, and from that sum should be deducted the amount of expenses they had already incurred in the way of editing, printing, and stereotyping 32 & 38?

A. Why, no, because that is the time they offered me $5,000.

291 Q. Was not the offer of $5,000 then made to be reduced by the amount they had incurred in editing, printing, and stereotyping?

A. No, sir; it was not.

Q. You are positive of that?

A. No, sir; it was not.

Q. You are positive of that?

A. No, sir; it was not.

Q. This interview was held in the little back office in the rear of the store of the Callaghans, was it not, Mr. Myers?

A. It was.

Q. Don't you recollect that Bernard Callaghan then called Andrew Callaghan in from the other part of the store for the purpose of asking him as the basis of their offer what expense had already

been incurred in the way of editing and stereotyping volumes 32 to 38?

A. I do not remember. Andrew Callaghan was back and forth, out and in the office, during the time that I was there.

Q. You have no recollection on the point that I have mentioned?

A. No.

Q. You have used the term "pool" — your volumes several times in connection with this June interview; will you be kind enough to explain what you mean by that?

292

A. Selling my volumes at the same price at which they would sell me those which they had owned. I believe they were inclined to accept that proposition once, provided I would make a contract for 3 years.

Q. Did you ever own or claim to own the copyright in any volumes prior the 32d or later than the 46th of the Illinois Reports?

A. I owned many of them—as much as anybody did—because they were not copyrighted according to law.

Q. Which do you refer to?

A. Previous to the 31st.

Q. The first nine previous to the 31st, do you mean?

A. Many volumes between the first and the thirty-fi-st were not legally copyrighted, no title pages or books filed in compliance with the law.

Q. Do you claim any copyright in any of these volumes, or did you ever?

293

A. I published some of them.

Q. Did you ever copyright them?

A. I do not remember. I do not think I ever did copyright them.

Q. Did you ever copyright or claim any interest in the copyright of any volumes subsequent to 46?

A. I never claimed copyright to any volume subsequent to volume 46.

Q. Did you, at any time during the year 1877, claim any copyright on volumes prior to 32 or later than 46?

A. I claimed no copyright but the right to publish them.

Q. As a matter of fact, don't you know that you never had any copyright for volumes prior to 32 or later than 46?

A. I never claimed that I had any copyright prior to volume 32.

Q. Or later than 46?

A. Or later than 46.

Q. And you make no such claim or pretence now prior to 32?

A. I have a right to publish those that were not properly copyrighted.

Q. Do you now claim or pretend that you have any right or claim to the copyright of the volumes before 32 or later than 46?

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A. I claim that I have a right to publish those that were not properly copyrighted.

Q. Do you now claim or pretend that you have any right or claim to the copyright of volumes before 32 or later than 46? Answer the question yes or no.

A. I claim the right to republish any volumes that were not legally copyrighted previous to volume 32.

Q. Do you now claim or pretend that you have any right or claim to the copyright of the volumes before 32 or later than 46?

A. I have a right to republish any that were not legally copyrighted.

Q. The question is not with reference to the right to republish, but with reference to the claim of copyright. Do you now claim or pretend that you have any right or claim to the copyright of the volumes before 32 or later than 46?

A. I do not remember; I could not tell without examining
295 my contracts with Mr. Peck, who was the reporter.

Q. You made some allusion to 9 volumes prior to 32 that you stated you had published at one time?

A. I made no allusion to them; I believe you did.

Q. What interest, if any, did you ever have in any of the volumes prior to 32 by contract with Mr. Peck or otherwise?

A. I published volumes 25 to 30, inclusive.

Q. When did you publish them?

A. The dates will be found upon their title pages.

Q. When did you publish them?

A. Between the years 1860 and 1868, I believe.

Q. Did you stereotype them?

A. Has this anything to do with this case?

Question objected to as not proper cross-examination.

Q. Did you stereotype them?

A. I did not stereotype them.

Q. Who did you publish them for?

A. For myself.

Q. Under a contract with Mr. Peck?

296 A. Some volumes we had a contract for; some volumes we had not.

Q. Mr. Peck was the reporter for these volumes?

A. Mr. Peck was the reporter.

Q. Did you ever published any of the other volumes prior to 32 than those you have just named?

Question objected to as not proper cross-examination.

A. I did not publish them; I purchased the entire edition, commencing with volume 16. I also bought the entire edition of Breese, which was volume I.

Q. Did you publish any of those prior to 32, after the great fire of 1871 in Chicago?

A. I did not.

Q. As a matter of fact, have you had any stock or, for the purposes of the trade, any of the volumes prior to 32 since the great fire of 1871?

A. Yes, sir.

Q. Except such as you were able to purchase second hand in the market?

A. Yes, sir.

Q. Which volumes?

A. 28, 29, 30, 31, and, I think, 27.

297 Q. Is it not the fact that all the stock you had of the volumes prior to 31 was destroyed by the great fire of 1871?

A. They were not destroyed in the fire of 1871.

Q. From what source did you get your stock of volumes 27, 28, 29, 30, and 31 subsequent to the great fire of 1871?

Objected to as not proper cross-examination and not pertinent to the issue.

A. They were printed before the fire of 1871, and were not in my building, which was destroyed.

Q. How many copies did you have of each of these volumes after the fire of 1871?

A. I do not remember, but a large number.

Q. How late, up to what year, did you continue to have your own stock?

A. I think I have some now.

Q. Of which volumes?

A. I do not remember; 29 was one of them.

Q. Have you any others?

A. I believe so.

298 Q. Which ones?

A. I do not remember.

Q. Did you have, during the year 1877, any of them?

A. I did. I never have been out of them since the great fire.

Q. Have you 27, 28, 29, 30, and 31 in stock now, or did you have during the year 1877?

Mr. LE MOYNE: I object, and instruct the witness that he is at liberty to answer the questions or not, as he sees fit.

A. Yes, sir; I do not think I have have any of 27; I am not sure whether I have any of 27 or one of them. I do not remember whether it is 27 or 28.

Q. Are they new volumes or second-hand?

A. Well, they never have been handled by anybody; they are new volumes; they never have been owned by anybody, I guess, except myself.

Q. In your examination-in-chief you estimated the value of the copyrights of volumes 32 to 46 at from 600 to 750 dollars each?

299 A. I did.

Q. Will you state the basis or ground-work upon which make that estimate?

A. For preparing similar work I have not paid less than $600 a volume.

Q. What do you mean by preparing milar work?

A. Work of less labor; for instance, the preparation of the American Corporation Cases, by Thomas F. Withrow.

Q. The preparation of the new and original volume by Mr. Withrow?

A. The copying of the opinions, the preparation of the syllabus, table of cases, and index.

Q. Your estimate is made upon that basis with reference to the original work—the preparation of the original volume?

A. Yes, sir; and conversations with authors and compilers?

Q. You stated in your examination-in-chief, in answer to the question as to the number of copies on hand of volumes 32 to 46, inclusive, at the time of the filing of this bill, that you had from 1,300 to 1,500 copies?

300 A. I so stated; yes, sir.

Q. How many copies of volumes 32 did you have on hand at the time of the filing of this bill?

A. I do not remember.

Q. Did you have any?

A. I do not remember.

Q. How many copies of volumes 33 did you have on hand at the time of the filing of the bill?

A. I do not remember.

Q. Did you have any?

A. Yes, sir.

Q. How many?

A. I do not remember.

Q. Were they second-hand or new volumes?

A. Second-hand, I presume.

Q. How many copies of volume 34 did you have on hand at the date of the filing of the bill?

A. I do not remember.

Q. Do you recollect that you had any?

A. Yes, sir; I had some.

Q. How many?

A. I do not remember.

Q. Were they new or second-hand volumes?

A. I do not remember.

301 Q. Don't you know, as a matter of fact, that they were second-hand volumes that you had picked up here and there among lawyers?

A. I do not.

Q. How many volumes of 35 or copies of volume 35 did you have on hand at the time of the filing of the bill?

A. I do not remember.

Q. Did you have any?

A. Yes, sir.

Q. Were they new or second-hand volumes?

A. I think they were second-hand.

Q. How many of volume 36 did you have on hand when you filed the bill?

A. I do not think I had any of 36. I may have had a copy.

Q. At the time of the filing of the bill in this case did you have any of volumes 37 or 38 on hand other than your reprint, made in the summer of 1877, of those volumes?

A. I do not remember; I think not.

Q. Do you not know at the time of the filing of the bill in
302 this case you had of original stock no copies of volumes 32 to 38, inclusive, and that all you had of these volumes were second-hand except the reprint of 1877 and 1878?

A. I know I had those that were not second-hand.

Q. How many and of which volumes?

A. I cannot tell you the number.

Q. Which volumes?

A. I do not remember.

Q. Where did you get them?

A. My own stock.

Q. Where and when did you get them?

A. I have had them for years.

Q. You are not able to say which volumes of your original stock?

A. If you refer back, then you will get the number of the volumes.

Q. Is it not a fact, Mr. Myers, that the stereotype plates of volumes 32 to 38, inclusive, were destroyed in the great fire of 1871?

A. Yes, sir.

Q. Did you ever reproduce those volumes until you reproduced 37 and 38 in the summer of 1877?

303 A. I never reproduced them until the summer of 1877.

Q. At the time of the filing of the bill in this cause how many copies in all of all the volumes 32 to 38, inclusive, did you have in your store or under your control other than the reprints of 37 and 38?

A. I do not remember.

Q. Give an approximate estimate.

A. I had about 1,300 volumes of 32 to 46, inclusive—that is, between them.

Q. At the time of the filing of the bill in this cause how many copies in all of all the volumes 32 to 38, inclusive, did you have in your store or under your control other than the reprints 37 and 38?

A. I cannot tell you exactly; I had about 1,300 volumes in all; I think a little more.

Q. I am talking of 39 to 46.

A. I have answered that.

Q. Can you make an approximate statement?

A. I will not attempt to do that from memory.

Q. Did you have 50 copies in all of volumes 32 to 38, in-
304 clusive, other than the reprints of 1877 and 1878?

A. I think I had more than that.

Q. Did you have 75?

A. I could not say; I may have had more and perhaps less.

Q. Did you have 80?

A. I make the same answer.

Q. Whatever copies you may have had in your possession or under your control, is it not the fact that they were largely, if not altogether, made up of second-hand copies?

A. Some second-hand and some of my original stock.

Q. What proportion of them consisted of second-hand and what of original stock?

A. I could not tell you now.

Q. Were not by far the larger portion of them second-hand copies?

A. I could not tell you now.

Q. Have you any knowledge on that point?

A. No, sir.

Q. How large an edition did you reprint of volumes 37 to 38?

A. A little over 250.

Q. Did you include these volumes in your statement of
305 1,300 copies in all of the volumes 32 to 46 in hand at the time of the filing of the bill?

A. Yes, sir.

Q. How many copies of volumes of 39 to 46, inclusive, did you have at the time of the filing of the bill?

A. I do not remember.

Q. About how many?

A. I do not remember.

Q. Have you any means of determining?

A. Subtract your 500 from the 1,300 and you get about the correct number.

Q. Of 39 to 46?

A. How many does that make? 500 from about 1,300 I suppose would be about 800.

Q. Calling your attention to the circular dated March 1, 1887, which you put in evidence yesterday in your direct examination, I will ask you if it is the same circular which was referred to in your affidavit introduced in rebuttal upon the hearing before Mr. Bishop, the master in chancery, last spring in this cause?

306 A. It is a circular printed at the same time, in the month of February, 1877.

Q. Is it the same circular that was produced before Mr. Bishop at that time?

A. Printed at the same time. It is one of a lot of circulars printed and issued at that time.

Q. Is it one of the lot of copies printed from the same type?

A. Printed from the same type and printed at the same time as many of my circulars are.

Q. Does it embrace exactly the same matter that was embraced in the circular produced before Mr. Bishop?

A. Exactly the same matter.

Q. Was that circular stereotyped?

A. It was not.

Q. Where was it printed?

A. It was printed by Hazlitt and Reed, in the month of February, 1877. At the same time I had another circular set up and ready to

send, embracing volumes 19 to 38, inclusive, the republication of these volumes.

Q. Is it not the fact that all your printed stock of volumes
307 32 to 38, inclusive, was destroyed in the great fire of 1871?

A. I have told you before that they were not destroyed in the fire of 1871.

Q. Is it not the fact that all you then had on hand or subject to your control were destroyed in the great fire of 1871?

A. They were not destroyed in the fire of 1871.

Q. Where were they preserved, if any?

A. In the city of Albany.

Q. What volumes?

A. They are named in my evidence there.

Q. Will you repeat them?

A. 28, 29, 30, 31, 34, 36, and probably 27.

Q. Is it not the fact that all the printed stock of volumes 32 to 38 which you had prior to the fire of 1871 was destroyed in that fire, except 34 and 36?

A. No, sir; they were not.

Q. What stock, if any, of the volumes from 32 to 38, inclusive, excepting 34 and 36, escaped the fire of 1871, of your stock?

308 A. Besides 34 and 36, I believe I had some of 38.

Q. And all the rest were destroyed in the fire except 34 and 36, and perhaps some of 38; is not that the fact?

A. To the best of my recollection, I may have had some other volumes, but not many. I am quite certain that there was a lot of 38.

Q. Is it not a fact that the stock you saved from the fire—of volumes 34, 36, and 38—had been sold long before the filing of the bill in this cause?

A. They had not all been sold.

Q. Which ones did you sell, if any stock, at the time of the filing of the bill?

A. I do not remember. I — got some of them now.

Q. Did you have any of 34, 36, and 38 that you had saved from the fire?

A. I have stated that I do not think I had any of 36.

Q. When was 36 exhausted?

A. I do not remember.

309 Q. Had it not been exhausted long before the year of 1877?

A. No, sir.

Q. Did you still have any of 36 on hand at the filing of the bill?

A. I believe I had some, not many.

Q. Or none of 34?

A. I am not certain of 34. I think I had a few.

Redirect examination by Mr. LE MOYNE:

Q. Mr. Myers, did you sell law books in Chicago all the time from the fire to the time of the filing of this bill?

A. Yes, sir.

Q. Was there ever a time between these two periods when you could not furnish all of these volumes of Illinois Reports which have been mentioned—32 to 46—to customers?

A. I have always been able to supply my customers; sometimes with second-hand volumes.

310 Q. In your conversation with Mr. Callaghan about this republication was that discussion between you about the price, as to how much should be paid for your interest in the volume?

A. Yes, sir; almost invariably.

Q. Was the letter written by them which was attached to your affidavit filed in this case the conclusion of those negotiations or were any of those negotiations which you have referred to subsequent to that letter?

A. That closed the negotiations of about a year or eighteen months.

Q. What was done with the original letter of Callaghan and Co. to you of February 16th, 1877?

It is stipulated that, inasmuch as the affidavit of Myers, to which the letter was attached, cannot now be found, Mr. Myers may furnish a copy of the letter of Callaghan and Co. to him and his answer thereto, to be attached to his deposition as exhibits.

311 Q. When the defendants threatened to publish your volumes or to re-edit them did they give you any notice as to how such re-editing or republication would be made?

A. They said that they knew a way to have them re-edited by which they could avoid infringing on my copyright.

With the exception of the books and documentary evidence, which complainant will produce at the trial, and which is subject to the examination of the counsel on the other side between now and then, at any time, complainant will close his case in chief.

312 COMPLAINANT'S EXHIBIT No. 1.

Law Books Published by E. B. Myers, Law-Book Seller, 93 Washington St., Chicago, March 1st, 1877.

American Corporation Cases by Withrow:

Vol. I, Private Corporation Cases	$6 00
Vol. II, Municipal "	6 00
Vol. III, Private " in press	6 00
Vol. IV, Municipal " "	6 00
Barber's Law Common Pleas Book	4 00
Bassett's Criminal Indictments and Pleading	4 50
Cities & Villages, act of Illinois	50
Court Rules—Practice in Chicago	1 50
Haines' Treatise for Justices of the Peace, seventh edition	7 00
Haines' Township Organization Laws, 396 pp., pamp-let	2 00
boards	2 50
law binding	3 00

	Hill's Highway Manual (for county officers), 240 pp., boards	1 50
	sheep	2 00
	Hill's Common Law Practice, 2 vols., 8vo	10 00
	Hill's Chancery Practice, third edition, 2 vols.	10 00
	Hill's Probate Guide, third edition	5 00
313	Hill's Municipal or Town Officer, 840 pp., 12mo	3 00
	Illinois Constitution of 1870	25

Illinois Supreme Court Reports:

	Breese's Reports (1 Illinois), reprinting	6 00
	Scannon's " (2 to 5 Illinois), 4 vols.	24 00
	Gilman's " (6 to 10 Illinois), 5 vols.	30 00
	Illinois " (11 to 18), 8 vols. (70, 71, 72, 73, 74 in press)	48 00
	Illinois Reports (19 to 38, inclusive), reprinting	
	" " (39 to 78), 40 vols.	200 00
	" " (vol. 46, separate)	7 50
	" Digest, by Wood and Long, 3 vols.	20 00
	" " vol. 3 (supplement)	5 00
	" Statutes (E. B. Myers' authorized edition), Revised Laws of 1871–'74, 1 vol., 1,253 pp., royal 8vo	5 00
	Iowa Supreme Court Reports, per vol.	5 00
	Iowa Digest, by Withrow & Stiles, 3 vols., royal 8vo	15 00
	Jones' Form Book	5 00
	McCrary on the American Law of Elections	5 00
	McMaster's Digest of the Law of Railways, in press	
	Minnesota Reports, 11 vols., reprinting	66 00
	Root's Law of Corporations in Illinois	1 50
	Session Laws of Illinois, 1871–'2	4 00
	Session Laws of Illinois, 1873	2 50
314	Session Laws of Illinois, 1874	3 00
	" " " " 1875	1 75
	Wells' Law of Limitation	5 00
	Wendling's Index to Illinois Reports	4 00

Withrow's Corporation Cases:

	Vol. I, Private Corporation Cases, 8vo	6 00
	Vol. II, Municipal " " 8vo	6 00
	Vol. III, Private " " in press	6 00
	Vol. IV, Municipal " " " "	6 00
	Withrow and Stiles' Digest of the Iowa Reports, 2 vols., royal 8vo	15 00
	Wood and Long's Digest of the Illinois Reports, third edition, 2 vols., royal 8vo	15 00
	Wood and Long's Illinois Digest, vol. 3 (supplement)	5 00

Miscellaneous:

	Templar Manual for Knights Templar, 32mo, cloth	1 00
	Full morocco	2 00
	Sackett's Masonic Burial Service, muslin	1 00
	Morocco, gilt	1 50

315 In the Circuit Court of the United States for the Northern District of Illinois. In Chancery.

EUGENE B. MYERS, Complainant,
vs.
BERNARD CALLAGHAN *et al.*, Defendants.

Testimony taken before Henry W. Bishop, master in chancery of said court, Tuesday, the 15th day of October, A. D. 1878.

Present: J. V. Le Moyne, Esq., solicitor for the complainant, and James L. High, Esq., solicitor for the defendants.

G. L. BARBER, a witness on behalf of the complainant, being first duly sworn, was examined in chief by Mr. LE MOYNE, and deposes and says as follows:

Q. Please state your name, age, residence, and occupation.

A. My name is G. L. Barber; residence, Chicago; occupation, a lawyer.

316 Q. Mr. Barber, state if you have made any examination of the volumes of the Illinois Reports from 32 to 39 as published by Callaghan and Company and compared them with those published by Myers and Company; if so, when did you make such comparison, and how thorough the same was.

A. I thoroughly examined volumes 32, 33, and 37. I do not remember the exact date, but previous to the filing of the bill, and compared them with Myers' edition.

Q. State if there is any degree of similarity between the books as published by Callaghan and Co. and those of Myers; and, if so, in what respects.

A. There is a degree of similarity in the arrangement of the matter and paging and in the head-notes, some of the head-notes being alike literally and many of them substantially alike in the respective volumes.

Q. State whether in the examination you made, in your opinion, the one book is made a copy from the other or not.

Objected to as incompetent.

317 A. That is the opinion I formed after making the examination, that the Callaghan edition was a substantial copy of the Myers edition.

Q. State what *was* the effect of the publication of Callaghan and Co.'s edition would be on the sale of the book of Myers'?

A. I should think the Callaghan edition would supersede the Myers edition.

Q. Mr. Barber, state whether you know anything of Callaghan and Company offering sets of the Illinois Reports made up in part of those publications of theirs; whether they offered them for sale in that way.

A. Only from hearsay.

Q. Not from personal negotiation with them?

A. No, sir.

Q. From your examination of the books as published by Callaghan and Co., that proportion—how much of the matter contained in the books of Myers and Co. has transferred and put into the books of Callaghan & Co.?

A. Well, it would be difficult to state the exact amount, but I should think nearly all of the matter in the volume that
318 I examined was contained in the Callaghan edition.

Q. Should you say nine-tenths or more of the contents of the Callaghan and Company's edition was the same as those in the Myers edition?

A. My recollection is—I do not know that I could express it in figures exactly, but the opinions, of course, are the same—a large portion of the abstracts or briefs or statements of the case that precede the opinions, and in many cases the exact syllabus or headnotes.

Q. I asked the question of your estimate merely for the guidance of one who would not have the books before him.

A. Well, I could not state in figures any amounts. There is very little of the matter in Myers' edition that is left out in the Callaghan edition. There are, of course, a few pages, on an average, left out, and that is supplied in some cases by additional notes.

Cross-examination by Mr. HIGH:

319 Q. Do you find any briefs of counsel in the Callaghan edition?

A. Well, my recollection is that in some volumes that I examined there were what I took to be briefs of counsel, abstracts of their briefs as cases cited, and so on. Whether they were as stated in my affidavit now I could not state. Whether they are briefs of counsel or statements of the reporter made up from the briefs I am not advised. They are statements of facts and authorities and the like, preceding some of the cases, in Myers' edition and in Callaghan's.

Q. If the statement of the cases in the Callaghan edition were made up from the opinion of the court might there not be an apparent resemblance between those and the statements in the Myers edition, and yet the statements in the Callaghan edition be the result of original labor on the part of the editor?

A. Well, I suppose the editor might modify the statement preceding the opinion somewhat, and my recollection is that in some cases he changed these statements back and forth—took some
320 part of it and put it in one part of the statement and another in another part. I think I found one or two cases of that kind, where the matter was the same and the language was the same, but he had changed them about and transferred the paragraphs.

Q. If the statements of the cases in the Callaghan edition were made up from the opinions of *of* the court might there not be an apparent resemblance between those and the statements in the Myers edition, and yet the statements in the Callaghan edition be the result of original labor on the part of the editor?

A. I do not know what you mean by "the result of original labor."

Do you mean that he would make the statement up from the opinion itself or from the attorney's brief? Is that what you mean by original labor?

Q. Original labor, instead of copying the statement of the case as it appeared in Myers' edition.

A. Well, I do not recollect of any statements that would show original labor. I suppose that he might put in statements
321 that would show original labor, but I do not have any recollection of those that did.

Q. If the statements of the cases in the Callaghan edition were made up from the opinions of the court might there not be an apparent resemblance between those and the statements in the Myers edition, and yet the statements in the Callaghan edition be the result of original labor on the part of the editor?

A. Well, the way you put your question, "made up from the opinions of the court," perhaps there might be that similarity.

Q. If it should be shown that the head-notes or syllabi in the Callaghan edition were made by the editor from his own study of the opinions of the court, without using the head-notes of the Freeman edition, might there not be an apparent resemblance in the head-notes in the respective editions, and yet the head-notes in the Callaghan edition be entirely the result of independent labor on the part of the editor?

A. Well, there might be a similarity in the head-notes of
322 one reporter and those of another in some instances.

Q. Is that all you have to say in answer to that question? If the statements of the cases in the Callaghan edition were made up from the editions of the court might not there be an apparent resemblance between those and the statements in the Myers edition, and yet the statements in the Callaghan edition be the result of original labor on the part of the editor?

A. I doubt one reporter using the exact language of another reporter without a comparison of the head-notes.

Q. Is that all your answer to that question?

A. I do not think I could give any further answer.

Q. If the editor of the Callaghan edition has made his head-notes by his independent study of the opinions of the court without using in any way the head-notes of the Myers edition might there not be an apparent resemblance between the head-notes of the respective editions, and yet the head-notes of the Callaghan be the result
323 of independent and original labor on the part of the editor?

A. There might be an apparent resemblance, and be the result of original labor, perhaps, but I doubt there being an exact resemblance.

Q. If the reporter of the Myers edition and the editor of the Callaghan edition have each prepared their head-notes from the opinions of the court, the editor of the Callaghan edition making no use whatever of the head-notes to the Myers edition, might there not in many instances be an almost exact resemblance between the head-notes, because of following the opinion of the court?

A. I do not see how that could be, unless they should happen to cut out the exact language of the court—if they should happen to do that, from the same opinion.

Q. Is it not generally true, in law reports, that the reporters in making their head-notes frequently follow the language of the court, literally or substantially?

324 A. Yes, sir; I think they frequently do that.

Q. Then, upon the hypothesis stated in my last question but one might there not be, if the reporter of the one edition and the editor of the other had followed substantially the opinion of the court or the language of the court, an apparent resemblance between the head-notes, and yet the head-notes of the Callaghan edition be the result of independent and original labor?

A. Perhaps such a thing might occur.

Q. Do you not find on the back of each of these volumes that you have compared, of the Callaghan edition, the name of Ewell and Denslow, as the case may be, in legible type, in lieu of the name of Freeman upon the original edition of Myers?

A. I did.

Q. Did you not find upon the title page of each of the volumes of the Callaghan edition that you have compared with the original, in lieu of the statement, "Reported by Norman L. Freeman, re-

325 porter," the words "Reported and edited by Marshall D. Ewell," or "By V. B. Denslow," as the case may be, and also the name of Callaghan and Company, as publishers, in lieu of the names of E. B. Myers or Myers & Chandler, publishers?

A. I did substantially.

Q. Would not the points to which I have just called your attention in the two previous questions strike an ordinary lawyer or purchaser of the Callaghan edition as points of dissimilarity between the two?

A. Yes, sir; they would in regard to these points.

Q. In the usual course of trade would it not be probable that after these editions had been upon the market a short time it would be generally known to the profession that they were two different editions, in your opinion as a lawyer?

A. I think it would.

Q. Are not the points of dissimilarity between the respective editions so marked or indicated that a purchaser desiring to

326 purchase the one would be in no danger of confounding it with the other?

A. If he examined the whole set, an ordinary person ought to be able to decide which work he was buying—which edition. A person of ordinary care in purchasing books would be able to tell the difference between the editions.

Q. Did you not find in the volumes of the Callaghan edition, before each of the head-notes, a concise statement of the contents of the head-notes, which does not appear in the Myers edition?

A. Yes, sir; I did in '37. I have not examined the others. I think they are similar throughout; that is my recollection.

Q. Did not you find in each volume of the Callaghan edition, accompanying most of the cases, no notes, with reference to adjudicated cases, which do not appear in the Freeman edition?

A. I have seen notes to several cases, but, I think, not to most of them.

Q. Do not such notes give an additional value to the new
327 edition ordinarily?

A. I have not examined the notes enough to give an opinion on that subject.

Q. If prepared with accuracy and care by the editor of the new edition, in your opinion as a lawyer, would not such notes give an additional value to the new edition over the old?

A. If the notes were strictly applicable to the case they might, but I have not examined to see what the notes in these editions are.

Q. If the notes in the new edition were strictly applicable to the case, and were prepared with accuracy and care by the editor from his own original investigation, would they not, in your opinion as a lawyer, give additional value to the new edition over the old?

A. Yes, sir; I think they would to each case to which they applied.

Q. If the editor of the new edition should be shown to have
328 made his head-notes from his own independent study of the opinions of the court without using the head-notes of the original reporter, and if it were then to be shown that the editor of the new edition had made his index to the volume from his own head-notes without using the index or head-notes of the original reporter, would not the index in the new edition be the result of original labor and not a copy of the original edition?

A. Certainly; if it were shown that he had done it without reference to the other, it must be the original labor.

Defendants' testimony concerning infringement of volumes 32 to 38 embraced in original bill.

And thereupon defendants, to maintain the issues on their part as to the infringement of volumes 32 to 38, inclusive, of the Illinois Reports, embraced in the original bill of complaint, read in
329 evidence the following depositions:

And thereupon defendant read in evidence the depositions of Andrew P. Callahan, Bernard Callaghan, and Andrew Callaghan:

In the Circuit Court of the United States for the Northern District of Illinois. In Chancery.

EUGENE B. MYERS, Complainant,
vs.
BERNARD CALLAGHAN *et al.*, Defendants.

Testimony taken before Henry W. Bishop, master in chancery of said court, Friday, the 10th day of January, A. D. 1879.

Present: John V. Le Moyne, Esq., solicitor for the complainant, and James L. High, Esq., solicitor for the defendants.

ANDREW P. CALLAGHAN, a witness called on behalf of the defendants, being first duly sworn, was examined in chief by Mr. HIGH, and deposes and says as follows:

Q. State your name, age, residence, and occupation.

A. Andrew P. Callaghan; age, 35; residence, Chicago; occupation, law-book seller.

330 Q. Are you one of the defendants in this cause and one of the firm of Callaghan & Company?

A. I am.

Q. How long have you been a member of that firm?

A. Seven years—since 1871.

Q. In what business has that firm been engaged since that period?

A. That of publishing and selling law books.

Q. What has been your business for the last ten years or more?

A. That of publishing and selling law books.

Q. State whether you consider yourself as familiar with the trade and business of publishing and selling law books, including law reports, and the usages and customs of the trade.

A. I am.

Q. I will ask whether the defendants, Callaghan & Company, were, during the years 1876 and 1877, interested in any way, and, if so, how, in the volumes of Illinois Reports prior to 32?

A. Prior to 1876 they had obtained the ownership of the stock and copyrights of such as then existed—that is, they owned the stock of 2 to 18, inclusive, and the copyrights or license to print of volumes 2 to 30, inclusive.

Q. Was that the condition of affairs during the years 1876 and 1877?

A. Yes, sir; up to February, 1877. We then obtained copyrights of 1 and 31.

Q. During the years 1876 and 1877 what interest, if any, did the firm of Callaghan & Company have in the Illinois Reports from volume 47 to the end of the series?

331 A. None. Up to the time that we commenced, in February, 1877, to reprint 19 to 38, we had none.

Q. Had you, at or about that time, acquired any interest, from Mr. Freeman or otherwise, in the volumes from 47 to the end of the series?

A. From 47 to the end of the series, we did.

Q. State, in a general way, the nature of that interest and when it was acquired, without going into details.

A. The arrangement included the right of Callaghan & Company to sell these volumes at a discount to the trade and a prohibition on Mr. Freeman to sell them to the trade at less than the catalogue price or the rate fixed by himself, $3.50 a volume.

Q. That was the general nature of your contract with Mr. Freeman, the reporter?

A. Yes, sir; substantially it gave us control of the trade and was intended to do so.

Mr. LE MOYNE: I would like to ask if that agreement was in writing?

A. It is.

Mr. LE MOYNE: Then I object to the testimony of Mr. High.

Q. Can you produce the written agreement?

A. Yes, sir; at any time.

Mr. HIGH: Then I will have the written agreement produced and put in the record as an exhibit, marked "Defendants' Schedule D."

Q. About what time was that contract made, as you recollect?

332 A. That was made in February, 1877, I think, or in March; I will not be positive. I think it would be better, perhaps, to have the agreement sent for—it is in the store—then we can tell the exact date.

Q. What was the condition of the market with reference to volumes 32 to 38, inclusive, of the Illinois Reports, from the year 1871 down to and including the year 1876, and therefore part of 1877?

A. The books were entirely out of print and scarce, and could only be had second-hand, as they could be picked up from one source or another.

Q. State whether, during those years or any of them, there was a demand by the legal profession or others for these volumes; and, if so, during which year and to what extent?

A. During all the time from 1871 and up to the date of our reprint, in 1877, there was a continuous demand from the profession in this State for them.

Q. State, if you please, what was the nature of that demand, as to whether it increased or diminished as the years proceeded.

A. Well, I cannot exactly understand the question. Of course, it was as heavy; I think it was as heavy in 1877—the fore part of 1877—as it was in the fore part of 1872—that is, the new enquiries were as numerous in 1877, probably, as they were in 1872, besides all that had bought parts of sets and had omitted those. Of course, there was a greater demand in 1877, take it in the aggregate, than there was in any previous year, and it was being continually added to.

333 Q. By whom were such demands made or from whom did such demands come?

A. The profession—the lawyers of Illinois.

Q. When did the firm of Callaghan & Company first contemplate or propose the republication of the Illinois Reports, volumes 32 to 38, inclusive?

A. We talked of it to Mr. Myers—I did—several times in 1876.

Q. How early in 1876?

A. I think as early as the summer, and I think as early as the spring. I think that I suggested that the first time that I interviewed him after we had purchased the interest of 2 to 18, inclusive.

Q. In the spring of 1876?

A. As early as that. We had so many interviews all along these years that I cannot place exactly the date of the first time when I mentioned the fact to him. It was certainly as early as the summer of 1876.

Q. That you proposed republishing volumes 32 to 38, inclusive?

A. Yes, sir.

Q. Coming down to the latter part of the year 1876, are you able to recollect any definite or special interview that you had with Mr. Myers concerning that matter?

A. Yes, sir; at that date—the latter part of 1876—we had.

Q. Fix the month as near as you can.

A. In November, 1876, we had made up our minds to commence soon (almost immediately) the reprinting of these volumes. We had had this project in mind for quite a long time. At that
334 date we had determined to commence almost immediately the reprinting of them.

Q. Now what, if anything, transpired between yourself and Mr. Myers in that connection in the month of November? Tell where and what occurred.

A. I went to his store for the double purpose of announcing to him our intention to reprint them, or to induce him to print those which were out of print—32 to 38 inclusive—or, failing to do that, to sell his interest in the entire Illinois Reports to us.

Mr. LE MOYNE: I object to the witness stating what his purpose was.

Mr. HIGH:

Q. State what was said and done between yourself and Mr. Myers at that interview in November in reference to this matter?

A. I asked him first if he would reprint volumes 32 to 38.

Q. What reply did he make to that?

A. He said he would not; it would not pay him; he had sunk money in volume 46.

Q. What reason, if any, did he give to you at that time for not reprinting 32 to 38?

A. It would not pay.

Q. Go on and state all that was said and done between you both at that interview.

A. He stated that he had reprinted volume 46 at a loss, and he had not got his money out of it yet, and he did not think that the market would afford a profit on the sale of 32 to 38. I then
335 asked him if he would sell his interest in volumes 32 to 46, inclusive, to us. He said he did not know what I would give. I told him that I was not there to make any offer, but that I would, if he chose, convey an offer from him. Afterwards, in the interview, I offered him $5,000 for the firm, subject to the firm's approval, or I would do this: that if he would make an offer of $6,000 that I would advocate its acceptance by the firm and would act at once. He refused the offer of $5,000, and he made an offer of $6,000, which offer I was to convey to the firm for acceptance.

Q. What was the offer of $6,000 to include?

A. It was to include the copyrights of volumes 32 to 46, inclusive, and the stereotype plates and stock of 39 to 46, inclusive, of which stock there was then supposed to be about 400 copies. He could not tell me how many, because he had not looked up his books, but he thought it would be about 400 copies.

Q. What was the condition of the other volumes during this discussion, as talked over by Mr. Myers?

A. 32 to 38 were then out of print.

Q. What, if any, value was attached by Mr. Myers in that conversation to the copyrights of any of the volumes mentioned, from 32 to 46, inclusive?

A. Mr. Myers claimed that the stereotype plates alone which he then owned of the eight volumes, from 39 to 46, inclusive, were worth alone the sum of money named, $6,000?

Q. Did he make any claim or assertion or statement as to any value of the copyrights of 32 to 38, inclusive?

A. There was a general discussion as to the value of copyrights,
in which I stated that no copyright was worth more than the
336 cost of reproducing the books, which would be about $150
and it was acquiesced in, as I understood, by him, but it did not figure in that estimate.

Q. State whether any value in that interview was attached by either party to the copyrights of volumes 32 to 38, inclusive. If so, what value?

A. No value was attached to them. I did not consider them worth anything at all, because it would not pay to reprint them. That was the general impression, that it would not pay to reprint them.

Q. What, if anything, did he state or assert in that interview with reference to the value of the copyrights of volumes 32 to 38, inclusive?

A. None at all.

Q. What else transpired at that November interview between yourself and Mr. Myers with reference to statements, if any such were made, as to the intention of your firm to reprint volumes 32 to 38?

A. I stated the general intention of the firm to reprint all the scarce volumes, including 32 to 38.

Q. I will ask whether Mr. Myers at that interview made any objection or remonstrance of any nature or kind concerning your proposed reprinting of 32 to 38; and, if so, what did he say upon that point?

A. He never said anything about it; I do not remember of his saying it at that time or at any other time.

Q. What, if anything, did he say at that November interview with reference to your proposed reprinting of volumes 32 to 38, as being an infringement of his alleged copyright in those volumes?

A. He said nothing about it. I understood him all along
337 to desire us to reprint all those six volumes or seven volumes,
they not being profitable to print himself.

Complainants' counsel objects to the witness stating what was understood.

Q. Well, go on and tell us what was said and what was done.
A. He said nothing.
Q. He stated nothing as to it being an infringement of his copyright?
A. No, sir.
Q. What did you do with reference to this proposition of his, then made, to sell you these interests for $6,000, as you have testified?
A. I carried that proposition to my partners for acceptance or rejection.
Q. State whether it was accepted or declined by your partners.
A. It was declined.
Q. Was Mr. Myers notified of that fact?
A. I cannot tell about that; I do not remember whether he was or not; I would not be positive about that. I think the arrangement at that interview was that in case it was accepted he would hear from us.
Q. When next did you have an interview with Mr. Myers concerning these reports, and where?
A. I cannot tell when; perhaps the next one was; but the next important one was after our announcement of the publication of 1 and 19 to 38.
Q. When did the firm of Callaghan & Company make any public announcement of their intention to reprint volumes 32 to 38?
338 A. In February, 1877.
Q. In what manner or form was that announcement publicly made?
A. It was published in prominent type on the first page of the Chicago Legal News.
Q. Look at the paper which I now show you, purporting to be the first page of the Chicago Legal News, of the date of February 24, 1877, and state if that is the publication of the Legal News to which you referred.
A. That is.

Defendants' counsel offers in evidence the paper identified by the witness, headed "The Chicago Legal News, volume 9, No. 23, Chicago, Saturday, February 24, 1877," the middle column of which begins, "A New Edition of Illinois Reports," and signed at the bottom: "Callaghan & Company, Chicago," and the same is hereto annexed and marked "Defendants' Schedule E."

339 Q. Is that the advertisement or published statement to which you have just referred?
A. This is the advertisement as it appeared in the Chicago Legal News.
Q. Who caused that to be prepared and inserted in the Chicago Legal News of that date?
A. I wrote this myself.

Q. And caused it to be published in the Chicago Legal News?

A. Yes, sir. I ought to state, perhaps, that a copy of this was sent as a circular all over the State.

Q. What was done in that regard?

A. A copy of this advertisement in the Chicago Legal News was printed in a circular form and sent to every lawyer in this State whose name we could get.

Q. When was it so printed and sent to the profession?

A. At about the same time.

Q. Was the circular sent by you to the profession about this time announcing the republication of volumes 1 to 38 an exact duplicate of the advertisement as it appeared in the Legal News?

A. Well, I will not swear that it was literally an exact copy. It was in substance the same. I might have changed one or two words in the advertisement if I thought it might be rhetorically improved; perhaps something of that sort.

Q. But it was copied from this?

A. It was copied from that.

Q. State whether about the time of the insertion of this advertisement in the Legal News, just referred to, you had any other
340 or further interview with Mr. Myers concerning these reports. If so, when and where, and what took place?

A. It was after that time that I had a further interview with him.

Q. How long after?

A. After I came back from Springfield, after settling with Mr. Freeman. After making this contract with Mr. Freeman, which is in evidence here, I came back at Mr. Freeman's request, to see Mr. Myers.

Q. Now, what took place between you and Mr. Myers, and when and where did this occur?

A. It was in March, 1877.

Q. Did you not have an interview with him in February, 1877?

A. Yes, sir. I had an interview with him in February, 1877, after the date of the announcement.

Q. Now, go on and state what took place at that interview in February.

A. At that date I asked him if he had seen the advertisement referred to. He stated that he had.

Q. What else was said by you to him?

A. And it bore rather hard on Mr. Freeman and he was glad of it.

Q. What, if anything, was said between you at this interview in February, of which you are now testifying, as to the purchase of his interest in volumes 32 to 46, inclusive?

A. We had several interviews upon that subject at that time, and, while I won't be positive that at that particular interview we talked over the amount to be paid for his interest in the reports, the
341 fact that we were reprinting 32 to 38 was manifest to him. We talked over it.

Q. Was it talked over in the interview?

A. Yes, sir; it was talked over.

Q. What, if anything, was said about a purchase of his interest in these volumes at this time?

A. We desired to purchase the volumes 32 to 46 all the time.

Q. Did you make him any offer at this time in the month of February for his interest in those volumes?

A. I do not think it was at the February interview we made that offer; I think it was at the next interview, in March.

Q. Go on with the March interview. State where that occurred and what took place.

A. At the March interview, after we had settled the contract with Mr. Freeman and made this contract, Mr. Freeman desired me——

Q. Never mind that.

A. Well, I called on Mr. Myers at the request of Mr. Freeman to repeat to him my offer of $5,000.

Q. Where did you meet him and what was said and done by both parties?

A. I met him at his store. I told him why I came and what I came to do and asked him for an answer.

Q. Did you make any proposition at that time in figures for his interest in those volumes?

A. I made a proposition to buy his interest in 32 to 46, inclusive, for $5,000.

Q. What did he say to that?

A. He said he would take it under advisement, first asking me to put it in writing.

342 Q. Did you put it in writing?

A. I did not.

Q. What else was said and done?

A. He was to give an answer in a few days.

Q. Did you state anything to him at that time, and, if so, what, as to any arrangements your firm had then made concerning the republication of 32 to 38, inclusive?

A. I think that I informed him at all the interviews I had with him of our intention. It had been published. It was known to everybody.

Q. Was anything said by you to him at this time concerning any arrangement that you desired to make for furnishing complete sets of Illinois Reports?

A. At an interview subsequent to that first one in March I went to see Mr. Myers as to what we could buy his bound volumes of 39 to 46 for.

Q. What was said between you upon that point at that time?

A. I said that if we could buy his books at a reasonable price that we would do so, but that if he charged an unreasonable price for them that we could not permit him to control the price of the set by charging a large sum of money for his volumes.

Q. Which volumes do you mean?

A. 39 to 46; and would therefore have to reprint them. He said he would sell his volumes 39 to 46 at the same price which we would charge for volumes 1 to 38—that is, our books. I will not state posi-

tively that he said 1 to 38, but he said our books. I replied that it was not an equitable basis—not an equitable arrangement—for the reason that our reprints cost us much more than his books,
343 which were old and printed from stereotype plates, cost him, and that our books were worth much more than his books were worth; that we would therefore not accept that proposition. That was substantially what occurred at that interview. We did not agree.

Q. When this proposition was made at this interview concerning an exchange of volumes between your houses was any allusion made, and, if so, what, to your reprints?

A. The allusion was made by both parties to our reprints.

Q. What reprints do you mean when you say our reprints?

A. Volumes 1 and 19 to 38. He desired that we should sell all of the first 38 volumes to him—everyting that we proposed to control or did control—1 to 38.

Q. Was anything said by you to him at this time concerning any plan for enabling your firm to furnish complete sets of Illinois Reports to the trade or otherwise?

A. At that time I stated to him that the time had come when an arrangement should be made by which we could offer complete sets for sale; that we were reprinting the scarce volumes and desired to know what he would sell his 39 to 46 for to complete sets.

Q. Did you state to him in that interview that your desire in obtaining 39 to 46 was to furnish complete sets of Illinois Reports?

A. I did. I told him that we intended to push their sale largely in other States than Illinois, and that in order to push them
344 in other States than Illinois we should have to sell them at a reasonably low price.

Q. I will ask whether at that time he had been informed by you in any way of the nature of your arrangement with Mr. Freeman already referred to?

A. He had been informed.

Q. How early was he informed of that arrangement?

A. The next day, I think, after I came back.

Q. After you concluded the arrangement with Mr. Freeman?

A. About March 11th or 12th.

Q. State whether in this last interview in March, of which you have just been testifying, any arrangement was completed between yourself and Mr. Myers for an interchange of volumes.

A. There was not.

Q. What next transpired in reference to the matter?

A. The next that transpired was, I think, I sent Mr. Beck down there.

Q. Who is Mr. Beck?

A. He is our shipper.

Q. What is his name in full?

A. George W. Beck.

Q. For what purpose did you send him?

A. To see if he could not make an arrangement with Mr. Myers by which we might get his 39 to 46, inclusive, at reasonable rates.

Q. What did Mr. Beck do in that regard?
A. Beck came back to me with a statement.

By Mr. LE MOYNE:

Q. Was Mr. Myers present when Mr. Beck made the statement to you?
A. No, sir.

345 Complainant's solicitor objects to what took place between the witness and his clerk when the complainant was not present.

By Mr. HIGH:

Q. What was the fact as to whether Mr. Beck finally came to you with any proposition from Mr. Myers which was accepted or rejected by you?
A. Mr. Beck came to me with the proposition from Mr. Myers to the effect that he, Myers, would sell his 39 to 46, inclusive, at the same price per volume at which we would sell Mr. Freeman's volumes—volume 47 to the end of the set. The price was fixed at $3.25.

Complainant's solicitor objects to the answer for the reasons above given.

Q. What was done with that proposition?
A. It was accepted by us; Mr. Beck was instructed to notify Mr. Myers of the acceptance.

Complainant's solicitor also objects to this answer for the same reasons.

Q. Under the arrangement made by Mr. Beck with Mr. Myers what, if anything, was done by your firm towards furnishing Mr. Myers Illinois Reports or towards receiving Illinois Reports from him?
A. We bought such sets from him at the price fixed in the agreement as we needed for orders.

Q. Are you able to state accurately the number of sets you
346 bought of him under this arrangement, whatever the arrangement may have been, and the dates when they were purchased, refreshing your recollection, if you desire, from any documents that may be in the case or otherwise?
A. March 21, 1877, we bought three sets; March 29 we bought one set; April 3 we bought one set; that same day, April 3, again we bought four sets.
Q. What volumes did these different sets, which you state you purchased of Mr. Myers at this time, comprise in the reports?
A. 39 to 46, inclusive.
Q. What next occurred between yourself and Mr. Myers concerning these reports, and when did it occur?
A. The next important interview that I remember was in our store between Mr. Myers and Mr. Bernard Callaghan and myself.

Q. At what time did that interview take place, as near as you recollect?

A. In June.

Q. What was said and done at that interview? Give the substance of what was said on both sides, as near as you recollect.

A. It was a long conversation. I do not know exactly where to commence. We stated to Mr. Myers that before proceeding farther with the expense of republishing the Illinois Reports we desired to buy his copyrights and plates—his interest in the whole of the Illinois Reports; that we would give him for his interest in the entire lot $5,000.

Q. What volumes were mentioned, if any?

A. 32 to 46, inclusive; that we would give him $5,000 for
347 his interest in them, less the expense and costs already incurred in printing the volumes that were then either printed or printing.

Q. By you?

A. By us, of volumes 32 to 38. Mr. Myers declined the offer and offered to put in his volumes, 39 to 46, inclusive, at the same price at which we would put in volumes 1 to 38, inclusive.

Q. What do you mean by "put in?"

A. Sell to him.

Q. Exchange back and forth?

A. Not exchange but to sell. He would sell to us volumes 39 to 46, inclusive, at the same price per volume at which we would sell to him volumes 1 to 38, inclusive. We declined that for the reasons given in a prior interview. He then offered to sell his interest in 32 to 46, inclusive, including the copyrights of the 15 volumes, the plates then on hand of 39 to 46, inclusive, and the stock of volumes 39 to 46, inclusive, which offer we declined; and that is substantially all the important matters that I now recall.

Q. State whether at the time of this June conversation of which you have just testified any of your reprint of volumes 32 to 38, inclusive, had appeared.

A. Volume 32 had.

Q. State if you know whether Mr. Myers was then advised of that fact.

A. Mr. Myers had bought a copy at that time of them.

Q. Before this interview?

A. Before that interview.

Q. In what condition were the other volumes of your re-
248 print, from 32 to 38, at the time of this June interview?

A. Some in the hands of the printer being printed and some in the hands of editors being edited for the press.

Q. What knowledge, if any, did Mr. Myers have at that time of this fact, of the condition of the other volumes?

A. We informed him of those facts at that time at that interview.

Q. I will ask whether Mr. Myers at that interview made any objection or remonstrance or complaint of any kind, and, if so, what, concerning your republication of volumes 32 to 38?

A. He did not at that interview or any other interview that I had with him.

Q. What statements, if any, did he make at that conversation as to whether your republication of 32 to 38 would in any manner infringe his alleged copyright in those volumes?

A. I do not remember that he made any statement to that effect.

Q. Are you able to fix the dates during the year 1877 at which each of your volumes, 32 to 38, appeared, refreshing your recollection from any documents in the case (handing witness his affidavit heretofore filed in the case)?

A. We published on the 31st of May, 1877, volume 32; July 14, volume 33; August 24, volume 37; August 28, volume 35; September 15, volume 34; October 6, volume 38; November, 19, volume 36.

Q. State, if you know, whether Mr. Myers was apprised of the publication of each of those volumes respectively from time to
349 time as they appeared or whether he purchased any of them.

A. He purchased several volumes of our reprint of volumes 33 to 28 and was appraised as others were of their publication.

Q. What amount of capital did your firm invest in these reprints of volumes 32 to 38, inclusive, during the year 1877?

A. Without getting the exact figures from the books I would say about $8,000.

Q. Where was the place of business of the firm of Callaghan & Company during this time, with reference to the place of business of Mr. Myers?

A. 161 Clark street; about two blocks away from Mr. Myers' store.

Q. Where was Mr. Myers' store at that time?

A. 93 Washington street.

Q. What is the fact as to whether during all this time, covering the years 1876 and 1877, there was any communication between the two firms in the course of business or between their employees? If there was such communication state to what extent it occurred.

A. There was the usual communication almost daily between the two concerns.

Q. What do you mean by the usual communication?

A. When we wanted to buy from him books that we did not have we went to his place of business for them and sold such books to him as he needed.

Q. About how often, generally, in the usual course of business, was there communication of this kind back and forth between the two houses?

A. I should say it averaged at least once a day, daily.

Q. In the law-book trade what value, if any, is usually
350 attached by the trade to the copyrights of law reports which have been on the market a number of years, such as volumes 32 to 28 of the Illinois Reports, at the time in question?

Objected to.

A. Very little, if any.

Q. For for what reason is little value attached to them?

A. Because it does not pay to reprint them at all with the pos-ession of the copyrights.

Q. State whether there is any usage or custom in the law-book trade in transactions concerning the purchase or sale of law reports which have been on the market for a number of years, with reference to the transfer of the copyright or the price to be paid for the copyright.

Objected to.

A. It is usual in large purchases of stock or of stereotype plates to charge substantially nothing for the copyright.

Q. What is the reason, if any, for that usage?

A. Because at the time that the stock or plates are bought the copyright is worthless—worth nothing.

Q. Why is it worthless?

A. There is no necessity for reprinting, and if there was a necessity for reprinting it would not pay to reprint always.

Q. What is the effect upon the commercial or market value of a volume of reports that has been sold in the market for a number of years as volumes 32 to 38 had been in the year 1877?

351 A. The filling of the first demand for the edition of the book renders it unprofitable for a very — many years to print a second edition, and the copyright in the meantime is worthless.

Q. You speak of the filling of the first demand for an edition of such books; what do you mean by that?

A. I mean that when a volume of reports is published the whole of the profession or nearly the whole of the profession who buy such books buy it, and that thereafter only a comparatively small number of men want the book.

Q. Within what period after the first publication of a volume of law reports, such as the Illinois Reports, would the first demand of which you have spoken ordinarily be supplied?

A. Within two years, I should say.

Q. What, in your opinion, as a member of the law-book trade, would be the elements of value in Illinois Reports, such as 32 to 38, that had been on the market as long as they had in the year 1877? I mean as to whether the value would consist in the copyrights or the stereotype plates, if they were stereotyped, or the printed stock on hand, if any?

A. Entirely or almost entirely in the printed stock and plates, and not in the copyrights.

Q. State whether in any of the interviews that you ever had with Mr. Myers concerning volumes 32 to 38 of the Illinois Reports he ever asserted or claimed any value as to the copyrights of 32 to 38; and, if so, what.

Objected to.

352 A. I do not know how to answer that question exactly. We discussed that on two or three occasions. He claimed all along that the copyrights were worth something.

Q. How much value, if any, did he attach to them at any of these interviews, in dollars and cents?

A. I do not recollect any precise sum that he put on them.

Q. What, if anything, did you say to him in any of these interviews as to the value of the copyrights?

A. That they were not worth to exceed $150, the cost of reproducing them.

Q. What, if anything, did he say to that?

A. He said that was something.

Q. I will ask if you have read the deposition of Mr. Myers in this case?

A. I have.

Q. Do you recollect his testimony concerning two alleged circulars which he stated he sent out, one to the trade and one to the profession, announcing a republication of these volumes about the month of February, 1877?

A. I do.

Q. State whether you ever saw any such circular.

A. I never did.

Q. Prior to the time that you saw the printed copy of the circular annexed to his deposition in this case?

A. I never did.

Q. When did you first hear or derive any information as to the existence of such circular or circulars?

A. When I saw his affidavit in the testimony before the master in this case.

353 Q. State whether, during the year 1877, you had, to any extent, and, if so, to what extent, salesmen travelling in different parts of the State in your business.

A. We had one man who traveled nearly all over the State in the beginning of the year and another man who traveled constantly in the State and nowheres else, besides having a third man in the city canvassing the city lawyers here.

Q. To what extent, during the year 1877, did you come in contact personally with members of the legal profession from various parts of this State?

A. Quite extensively.

Q. In what way did that come about?

A. By personal visits in the store; men coming in to buy, and talking about the proposed reprint, and our action with regard to Mr. Freeman, and by correspondence.

Q. Did you ever, from any such persons, members of the profession, or your salesmen, or otherwise, receive any hint or intimation of any kind concerning the two alleged circulars referred to by Mr. Myers in his deposition?

Objected to.

A. Never.

Q. Did you ever, in 1877, learn in any way through members of the profession or through your salesmen or otherwise concerning the issuing of those alleged circulars of Mr. Myers'?

A. Never, directly or indirectly.

Q. When did you first learn that Mr. Myers contemplated republishing volumes 37 and 38 of the Illinois Reports?

354 A. In August, 1877.

Q. How did you first learn it?

A. I heard on my return from a trip to the East that a firm of printers in the city were at work on a volume of Illinois Reports for Mr Myers.

Q. Which volume was that?

A. Either 37 or 38. It was being printed, I understood, by Hazlitt & Reed.

Q. State whether up to that time you had received any knowledge whatever in any way or manner concerning Mr. Myers' republication of any of those volumes.

A. Never.

Q. I will ask whether, in any of the conversations or interviews that you ever had with Mr. Myers or with any of his clerks or employees prior to the filing of the bill in this cause, either or any of them made any objection to you concerning your reprint of Illinois Reports; if so, what did they say, and when?

A. I never heard any objection from any source to our reprinting 32 to 38.

Q. Directly or indirectly?

A. Directly or indirectly.

Q. State whether Mr. Myers or any of his employees at any time prior to the filing of the bill in this cause ever made any statement or objection to you concerning the alleged infringement of his copyright in 32 to 38 by your reprint of those volumes?

A. I do not remember any.

Q. When did you receive the first knowledge or intimation of any kind that Mr. Myers objected to your reprinting volumes 32 to 38, inclusive?

A. When the bill was filed.

Q. Did you have any knowledge on that point before that

355 time?

A. None.

Q. Directly or indirectly?

A. No, sir.

Q. From him or from any other person whatever?

A. Neither from him nor from any other person.

Q. In your conversation with Mr. Myers in the month of February, after the publication of the advertisement in the Legal News to which you have referred, and in which you have stated he said to you that he had seen such advertisement, state whether in that interview he made any objection, and, if so, what, to your reprint of volumes 32 to 38.

A. None.

Q. What effect, if any, was produced upon your mind by these various interviews and conversations with Mr. Myers, to which you have testified, as to the publication of volumes 32 to 38?

Objected to.

A. I was induced to believe that he wanted it done.

Adjourned to Jan'y 14, 1879.

356 In the Circuit Court of the United States for the Northern District of Illinois. In Chancery.

EUGENE B. MYERS, Complainant,
vs.
BERNARD CALLAGHAN *et al.*, Defendants.

Testimony taken before Henry W. Bishop, master in chancery of said court, Tuesday, the 14th day of January, A. D. 1879.

Present: John V. Le Moyne, Esq., solicitor for complainant, and J. L. High, Esq., solicitor for the defendants.

ANDREW P. CALLAGHAN, a witness on behalf of the defendants, was further examined by Mr. HIGH, and deposes and says as follows:

Q. You have spoken of frequent communications between the employees of the two firms back and forth during the year 1877. State whether you recollect any occasion on which any of the employees of Mr. Myers, when in your store during the summer of 1877, made inquiry concerning the condition of your reprints

357 A. The employees usually did not come to me to transact their business, but on one occasion I heard George Myers—I think his name was George L.——

Q. The son of the complainant?

A. The son of Mr. Myers, the complainant; asked how our reprints were getting along, and I heard Mr. Beck inform him.

Q. State whether, in any of these various interviews that you had with Mr. Myers, of which you have already testified, during the years 1876 and 1877, he ever made any statement to you of any intention on his part to print volumes 32 to 38, inclusive. And, if so, when, and what did he say?

A. I do not remember his ever having said so. On the contrary, I understood that he did not want to do it; on the contrary, he told me that he did not want to do it, and would not do it at that time because it would not pay.

Q. In these various interviews and conversations which you have narrated with Mr. Myers state whether the conversation was usually directed to volumes 32 to 38 or volumes 39 to 47, inclusive.

A. The question at issue between Mr. Myers and ourselves was whether we should reprint volumes 39 to 46 or not; whether we should buy his interest, his entire interest, in the Illinois Reports, or, ignoring his interest in the Illinois Reports, reprint 39 to 46, and so affect or destroy the value of his stereotype plates in 39 to 46.

Q. What relation did the conversations have concerning volumes 32 to 38 as compared with the conversations concerning volumes 39 to 47, inclusive?

358 By Mr. LE MOYNE: I object to the witness saying anything more than what was said by the parties to each other.

A. They were not the main subject of discussion; 32 to 38 were never the subject of the principal discussion; they were merely incidental; 39 to 46 and our reprinting of them was the question at issue.

By Mr. HIGH:

Q. State whether in any of these conversations or interviews to which you have referred Mr. Myers ever expressed any unwillingness towards your reprinting volumes 32 to 38. If so, what, if anything, did he say in that regard?

Objected to.

A. He never expressed, so far as I can recollect, any unwillingness to have us reprint 32 to 38 alone.

Cross-examination by Mr. LE MOYNE:

Q. Have not you and Mr. Myers been the only law-book sellers in Chicago for many years?

A. During what time?

Q. For many years.

A. We have had a number of small dealers here at different times, but we were the only really large law-book sellers of the place.

359 Q. Has there not been very active competition between you?

A. Quite active.

Q. Which occasionally led to some ill feeling?

A. At times.

Q. And have not the Illinois Reports been an important item in the sales of both of you?

A. Up to what date, sir?

Q. All through your business.

A. No, sir.

Q. Have not?

A. No, sir; we were not able to handle the Illinois Reports before 1876 so as to afford anything like an active competition.

Q. How was it from 1876 down?

A. Then there was competition to some extent because we commenced to handle them.

Q. Did you not from time to time make considerable efforts to get the contract from Mr. Freeman for the sale of the reports, and get it away from Mr. Myers?

A. Not from the date at which I became a member of the firm.

Q. Up to that time you did not make any effort?

A. From the time I entered the firm to the time I made the contract with Mr. Freeman in 1877 we made no effort whatever.

Q. Did you make any effort to have any legislation passed which would deprive Mr. Freeman and Mr. Myers of the control of the Illinois Reports?

A. I do not recollect whether such effort was made in 1871 or 1873; if in 1873 it was when I was in the firm; if in 1871 I was not.

Q. Mr. Bernard Callaghan made no effort to your knowledge?

360 A. I do not recollect about that.

Q. When you published the advertisement in the Legal News, which has been attached to your deposition, had you seen the advertisement by Mr. Freeman announcing his intention to publish any of the Illinois Reports?

A. We had.

Q. Was that anterior or subsequent to yours—that announcement?

A. It was anterior to ours.

Q. Wasn't it in consequence of this announcement of Mr. Freeman that you gave the other notice and made preparation to make a publication of this kind?

A. No; not solely.

Q. Well, was that the moving cause that started you?

A. It may have been the moving cause at that time particular, but we had contemplated it for a year.

Q. Did you not say before in your testimony that as soon as you saw that announcement that you got to work to publish all these volumes that he had announced, so as to anticipate his publication?

A. We made two announcements in that circular; which do you allude to?

Q. Haven't you said that was the reason for your announcement and commencing the publication—that you intended to anticipate any publication by Mr. Freeman?

A. It was in consequence, or somewhat in consequence, of his announcement at that time that we made the counter announce-

361 ment—about 19 to 38 at that time—but we had before resolved to print them, and we determined to print them long before we saw his announcement.

Q. But that was the cause of the announcement at this time?

A. At this time.

Q. When did you commence the publication of the volumes which Mr. Freeman had announced in his notice?

A. Immediately after the date of our announcement; February 24th, I think it was.

Q. How many of them did you ever publish?

A. We published the whole of them.

Q. How were they published?

A. How were they published?

Q. Were they prepared for publication in the same manner as those from 32 to 38 were prepared?

A. Were what?

Q. The volumes of the Illinois Reports preceding 32 which you published?

A. Some of them we did not prepare at all for publication. Mr. Freeman had already printed, without our knowledge, two or three of the volumes.

Q. Two, was it not—19 and 31?

A. We bought from him 23, 25, & 31. He had prepared one other, but I don't think we bought it of him.

Q. Now, was these printed by you in the same manner as you printed 32 and 38?

A. No; you mean they were edited; that is what I suppose you mean; you say printed.

Q. Were they not printed exactly from the old books; just the old books duplicated?

A. No, sir.

362 Q. Without any change in the syllabus or in the statement of fact?

A. Yes; those we printed were.

Q. Up to 32?

A. Up to 32.

Q. Did you commence the publication of any of those before you made the contract with Mr. Freeman?

A. We did not.

Q. Did you continue the preparation?

A. Let me correct that; a few days before we made the contract with Mr. Freeman, of course we announced the publication of the books, and then immediately on the announcement of the publication, of course we prepared to print before we made the contract.

Q. Did you make any contract to print, if so, with whom, prior to your arrangement with Mr. Freeman?

A. We did.

Q. With whom?

A. We made an arrangement to print the 19th and 21st, and I think the 20th.

Q. With whom?

A. To the best of my recollection, with Mills & Company, of Des Moines, and Atwood & Culver, of Madison, and the Chicago Legal News Company.

Q. Can you fix the date at which that contract was made by referring to the books or the contract?

A. I think I can.

Q. I would be obliged if you would do so. Can you do so by going to your store?

A. I do not know; I think there was a written contract made with Mr. Bradwell; I do not know whether we had a copy of it; he had a copy of it.

363 Q. Before this testimony closes I will ask you to insert the date when these contracts were made.

A. I will.

Q. You have said you commenced the publication of volumes 19 to 38 in February?

A. Yes—that is, we commenced to make arrangements for them.

Q. Do you mean that you did anything towards reprinting from 32 to 38 at that time, or that you commenced your other reports as early as that date?

A. I think we made arrangements for the editing for the 32 to 38 and the reprinting of the 19 to 31 about the same time; the arrangement with Mr. Freeman had nothing to do with our reprinting contract.

Q. Well, do you mean to say that you made your arrangements or your contract for the re-editing list from 32 to 38 as early as you named in your deposition—February, 1877?

A. About the same time.

Q. Now, with whom did you make your first arrangement to that effect?

A. I think the first arrangement was made with Mr. Ewell.

Q. Did you not know at that time that Mr. Myers' books were copyrighted?

A. I suppose they were.

Q. You have stated that you had a number of interviews with Mr. Myers during the spring and summer of 1877. You say, "I think I informed him in all the interviews I had with him of our intention"—referring to the intention to republish.

A. Yes, sir.

364 Q. State what was your object in repeating that at each of your interviews with Myers to him.

A. I wanted to make an arrangement with Myers by which we could either buy from 39 to 46, inclusive, from him; or, failing in that, to buy his interest in the Illinois Reports.

Q. Allow me to read your answer and the question to which I have read the answer: "Did you state anything to him at that time; if so, what, as to any arrangements your firm had then made concerning the republication of 32 to 38, inclusive?" Your answer is, "I think I informed him at all the interviews I had with him of our intention." Now, my question is, What was your object in informing Mr. Myers at all your interviews with him of your intention to republish 32 to 38?

A. I have just answered that question by stating that my object was to put complete sets upon the market, and in order to do that I wanted from 39 to 46 from him or to buy his interest.

Q. Then you mean that your notification to him of your intention to publish 32 to 38 was intended to induce him to sell you 39 to 46?

A. Certainly. We would print up to where his volumes commenced.

Q. Did you suppose and believe at that time that you had a right to reprint 32 to 38 without Mr. Myers' consent?

A. Do you mean the naked reprint of his books—a literal reprint of his books?

Q. Reprint them in any way.

A. Why, certainly we would have a right to print them.

Q. You then supposed that you had a right to reprint his books without his consent?

365 A. We had a right to reprint 32 to 38 of the Illinois Reports without his consent. What he considers his books I do not know.

Q. I intended to have you to understand it was from 32 to 38. Did you ever ask Mr. Myers' consent to reprint those books?

A. No; we notified him that we would.

Q. You notified him of the intention, but you did not ask him for any consent on his part?

A. I judged from all his conversations that I did not need his consent.

Q. I will ask you if you ever asked him for his consent that you should reprint 32 to 38?

A. No; nothing more than I have told you.

Q. Or 32 to 46?

A. Nothing more than what I have told you.

Q. Didn't you, in a conversation that you had with Mr. Myers, say to him that you had the right to reprint those; that there was a was a way that you could do it?

A. I did.

Q. And that you would do it?

A. You mean all his volumes?

Q. From 32 to 46.

A. From 32 to 38, and I am not sure but I included 32 to 46.

Q. Did you not tell him you would have them reprinted?

A. I did.

Q. Was that said in connection with your efforts to buy from him his interest in the books?

A. My efforts were not confined to buying his interest in the books; it was twofold: to either get him to sell his books to
366 us at a reasonable price, so as to complete the sets at a reasonable figure, or, failing in that, to reprint them for our own protection.

Q. In your testimony here you have detailed negotiations between you and him for the purchase of his books. You have stated you made an offer of so much of his books for the copyrights of 32 to 46, inclusive. Now,' was this notification to him that you intended to have these books reprinted and re-edited anyhow if you did not purchase from him, these statements made to him in connection with your negotiation to buy them at the same interview?

A. Yes, sir; I told him if he did not sell us the books at a reasonable price or sell us his interest in the entire Illinois Reports, then we would be compelled for our own protection to reprint them.

Q. Did you give any directions to Mr. Denslow as to the method in which he was to prepare the books, volumes 37 and 38, which he prepared for you?

A. I did.

Q. Did you instruct him as to what was necessary that he should do in order to avoid the copyright, or did he advise with you on that subject?

A. We talked over that subject together.

Q. Who prepared the table of cases for those two volumes?

A. I do not know.

Q. Did you prepare it?

A. No.
Q. You do not know who prepared it?
A. I do not.
Q. Who prepared the title page?
A. I do not know.
Q. Did you ever see it before it was printed, after it came from Denslow's hands?

367 A. He has shown me two or three title pages of the different volumes that he has printed or edited at different times, but I cannot place which those volumes were he showed me.

Q. Mr. Denslow submitted them to you?
A. Some of them; not all.
Q. Did he prepare the title pages?
A. I believe he did.
Q. Of 37 and 38?
A. I do not know that; I think he did, and I have not reason to believe otherwise.
Q. Did he prepare any of the title pages of any of the other volumes of the Illinois Reports?
A. Than what?
Q. Than 37 and 38.
A. I believe he did; he edited other volumes.
Q. What other volumes?
A. He edited volume 41—that is, published 43 and 46.

Defendants' counsel objects to any further testimony about volumes later than 38 as being irrelevant and not proper cross-examination.

Q. Why was there any difference made in the reprinting from 32 to 38 and the method of reprinting the volumes preceding 32?
A. We did not want to infringe—that was my impression—we did not want to infringe on Mr. Myers' rights.
Q. And what you did in the way of republishing volumes 32 to 46 you considered that you had a right to do?

Defendants' counsel objects to any question or answer to or
368 from the witness as to volumes later than 38 for the reasons above stated.

A. I considered, of course, that we had the right to do what we did.
Q. That you were not infringing on any right of Mr. Myers?
A. No.
Q. It was not necessary to have his consent to it at all?
A. No, not for what we did.
Q. In March, 1877, how many volumes, prior to the 32nd, were you printing?
A. Oh, I cannot state the exact number without referring to our letter-book; we had made contracts with several.
Q. You were at work on a number of them, then?
A. Yes, sir.
Q. In March?
A. Yes, sir.

Q. You say that you had an interview with him after your return from Springfield, in March, 1877?

A. Yes, sir.

Q. At that time you had a number of the volumes under way anterior to the 32nd?

A. Anterior to 38.

Q. To the 32nd?

A. Yes; and to 38.

Q. You say you had an interview with him about March 21st, under which an arrangement was made by which you bought seven copies from him of his volumes?

A. I did not make that arrangement except by proxy.

Q. Now, what was the last interview anterior to that that you testified to, do you remember?

369 A. About the 12th of March.

Q. The 11th or 12th of March?

A. Yes, sir.

Q. Now, you say, "The next important interview that I remember was in our store between Mr. Myers, Mr. Bernard Callaghan, and myself;" do you remember any interview between those two dates?

A. There was an interview that I testified to between the dates.

Q. What time did that take place?

A. That was in March.

Q. When was it?

A. I should say—of course, it was between the 12th and last of March.

Q. Have you testified in regard to that interview?

A. There was an interview.

Q. Was there not an interview between you and Mr. Myers at his store in which you told him you would not continue the arrangement under which you had been getting from 39 to 46 from him?

A. That was in April.

Q. That occurred, did it not, between the two interviews that you have testified to here?

A. Between the March 11th or 12th interview and the June interview.

Q. That interview has not been referred to in your direct testimony?

A. The April interview is not.

Q. When you say the next important interview between Mr. Myers and myself took place in June what did you mean?

A. I had in mind, when I answered that question, the negotiation for the sale of the property.

370 Q. And not in regard to your dealing in volumes 39 to 46?

A. I did not have in view that when I answered that question.

Q. There was an interview, then, in April?

A. There was.

Q. Now, did not you go to Mr. Myers and notify him that you would no longer carry out that agreement?

A. No; that was not the reason of my going.

Q. Did you not go there and terminate the agreement?

A. I went there for the purpose of informing him that by our contract with Freeman——

Q. I did not ask you what your purpose was; I asked you whether you notified him.

A. I went there to notify him and did notify him that by our contract with Freeman we were not permitted to sell to members of the trade Mr. Freeman's reports from 47 to the end of the set at less than $3.50 unless the party purchasing stipulated to sell them at not less than $3.50, and I went there to notify him and did notify him that I did want such a stipulation for Mr. Freeman. He refused it, and I then notified him we could not sell him the Freeman reports any longer at the reduction, but that we must charge him $3.50. I then asked him for the stipulation again in writing, which he refused, but he said he would be willing to give his verbal stipulation. I was not prepared at that time to accept a verbal stipulation, but said I would write to Mr. Freeman, and if Freeman was willing to accept such a stipulation that that would be satis-
371 factory to me; that all I cared to do in the premises was to comply with my written agreement with Freeman; and I wrote to Freeman and got his reply.

Q. In the first part of your answer you say by the terms of the contract between you and Mr. Freeman you were obliged to do so and so. Is that the contract which you have produced as an exhibit here?

A. Yes, sir.

Q. And you then did terminate the arrangement between you and Mr. Myers by which he was selling you those volumes?

A. On his refusal to comply with the contract between us and Freeman.

Q. You then terminated the arrangement?

A. To sell him books at $3.25, but I was willing to sell him them at $3.50.

Q. I only ask you whether you terminated the arrangement made through Beck by which he was to sell him then at $3.25.

A. I was willing to sell him then at $3.50 and so notified him.

Q. You then notified him that you would not continue to carry out the contract?

A. To sell at $3.25.

Q. What do you mean, then, in your affidavit filed in this cause by saying that said Myers repudiated said contract or agreement made through said Beck?

A. Because the agreement was made through Beck that he would sell his 39 to 46, inclusive, at the price at which we would sell him Mr. Freeman's volumes. When I raised the price as controlled by my contract with Freeman from $3.25 to $3.50 he raised
372 his price on his books from $3.25 to $5 to us, and refused to sell at less. I was willing to go on and sell him at $3.50 and take his books at $3.50, but he was not.

Q. Well, the retail price of his was $5, was it not?

A. Not at that time.

Q. And the retail price of yours was $3.50?

A. I do not know what the retail price of his books was. Our price was $3.50.

Q. You do no- know what the price of 39 to 46 then was—the retail price?

A. No; they had different prices; they run from $10 to $4.

Q. Then your statement in this affidavit that Myers repudiated the contract you mean after the contract was annulled in the way you have stated in your testimony now, do you?

A. I mean that I considered him responsible for the termination of the agreement.

Q. At the time you made the contract to sell Myers Mr. Freeman's books at $3.25 through Mr. Beck you had not then made your contract with Freeman, had you?

A. Certainly I had.

Q. You had?

A. Certainly. Before I made the contract with Freeman the price was $4 and $4.50. By the contract we got it down to $3.50.

Q. Then you claim after you made the contract and without anything intervening between you and Freeman you advanced the price after you had made the Freeman contract? Do you understand the question?

A. Not fully.

373 Q. If the agreement had been made by him before you made this contract with Myers you then went to him in April and claimed an advance, because you had made a contract with Freeman?

A. Yes; I had overlooked that clause in the contract and so informed him and brought the contract over to the store with me.

Q. You say Mr. Myers had a copy of the 32nd—bought a copy; did you sell him a copy?

A. Yes; I did; not personally, but the firm of Callaghan & Company sold to E. B. Myers a copy of the 32nd Illinois Reports.

Q. How do you know they did?

A. I see it from the charge.

Q. Is that all you know about it?

A. That is all I know personally, except this, that he paid for it.

Q. The question was, "State whether you know that Mr. Myers was then advised about that fact." You say, "Mr. Myers bought a copy;" do you know anything about it but the charge on the books?

A. I see the account on the books, and the account was settled by check.

Q. You know what you saw on the book?

A. Yes, sir.

Q. That is what you meant to swear?

A. Yes, sir.

Q. In one of the questions you were asked, "What value in the law-book trade is attached to copyrights?" The question following is as follows: "For what reason is little value attached to it?" Your answer is, "Because it does not pay to reprint them with the pos-ession of the copyrights;" is that answer correct?

374 A. Yes, sir.

Q. What does it mean?

A. It means if you pos-essed copyrights and there was not a sufficient demand for a given book that it would not pay to reprint that book even with the copyright.

Q. That is to say, if there was no demand and you could not sell the book it would not pay to reprint the book?

A. Exactly; I would not sell them if there was no demand or if there was not sufficient; it would not pay to reprint the book with the copyright.

Q. That is what you mean by saying that very little value is attached to the copyright?

A. That is what I mean.

Q. Because there is no demand?

A. Yes—that is, the value of the copyright, to some extent, depends upon the demand for the book which is out of print; it at no time extends beyond the cost of reproducing it, in my judgement.

Q. Does not the value of the copyright depend solely on the question as to whether there is any demand for the book; is not the copyright of a book that is not salable worthless?

A. It is.

Q. But if there is a demand for a book, then is not the copyright worth something?

A. If there is a demand sufficient to pay for the reproduction and something more.

Q. You were asked about what was the usage in the trade in regard to copyright, and what is the reason, if any, for the usage. Your answer is, "Because at the time the stock or plates are bought the copyrights are worthless—is worth nothing;" do you mean

375 to answer that in regard to all the books or to law books, or what does your answer mean?

A. All reports, so far as my knowledge extends. That has been our practice to pay nothing for the copyright of large stocks of books that we bought.

Q. You mean to say that at the time the stocks or plates are bought the copyright is worthless—worth nothing?

A. I mean to say that at the time when a stock or plate of a series of reports is bought, and they are in print, it is usual with the trade to charge nothing for the copyright, so far as my observation extends.

Q. How many instances have you ever known of sales of the stock and plates of reports that were copyrighted?

A. There were two sets, in our own experience. One was the Minnesota Reports, which we bought and paid nothing for the copyright. Another was a set of Illinois Reports, 2 to 18, inclusive, the stock of which we bought and paid nothing for the copyright. I think there was a nominal sum mentioned; something like $100 or $200 for the 30 volumes of the copyright—a merely nominal sum mentioned.

Q. Did you not buy the Iowa Reports of Mr. Wetherell?

A. Callaghan & Company did not.

Q. Who did?

A. That was before I went into the firm or came out West at all.

Q. Do you not know that your partner bought them?

A. From what he has told me I understood he bought them.

Q. And paid a high price for the copyright inclusive?

376 A. I do not know how much he paid.

Q. You were asked this question: "What is the effect upon the commercial or market value of a volume of reports that has been sold in the market for a number of years?" Answer. "The filling of the first demand for an edition of a book renders it unprofitable for very many years to print a second edition, and the copyright in the meantime is worthless." Now, a copyright would be worth something?

A. No, sir; not, in my judgement, until the demand was sufficient to pay for a reproduction of the book.

Q. Have you stated in your testimony that in the spring of 1877 there was an increasing demand for these volumes 32 to 38?

A. Yes, sir.

Q. It had been accumulating for many years?

A. Yes, sir.

Q. And had been greater in 1877 than it had ever been before?

A. Yes, sir.

Q. Under such circumstances as that would you consider that a copyright was worth something or not?

A. The demand, in my judgement, at that time had not been sufficient to pay for a reproduction of the book.

Q. Then is not the value of a copyright solely dependent upon the demand for the book?

A. Up to a certain extent.

Q. Then *if* the demand for a book does not regulate the value of the copyright, in your opinion?

A. It does, as far as the cost of reproducing the volumes.

377 Q. Then the value of a copyright, if there is a demand for a book, would be worth whatever it would cost to re-report the books or re-edit them?

A. If there is a sufficient demand, up to that point the demand governs the value of the copyright; before that it does not; I mean that if the cost of producing 30 copies of a volume of reports exactly equalled the cost of a production, including the cost of reporting and making a new volume, then, up to that point, the demand for the book would affect the value of a copyright; but if the demand was 1,000 copies the demand for the extra 700 would not affect the value of the copyright, in my judgement.

Q. That is to say, you mean the value of the copyright would only influence the price of a certain number of volumes to pay for the cost of reproduction?

A. The value of the copyright would affect the value up to the point where the cost of the reproduction of the book and the copyright is equalled by the demand.

Q. In your estimate of the value of the copyright do you not consider the cost of producing the book without the copyright; is not

that an essential element in your estimate of the value of the copyright—how much it would cost to produce the book without the copyright?

A. I placed the value of the copyright and the value of reproducing the book editorially.

Q. Then your estimate of the copyright is affected by the cost of the book without the copyright?

A. It is affected by it, but does not govern it.

Q. If you are offered a copyright and you believe you can
378 produce the book at a lower price your estimate is affected by the way you can get it cheapest?

A. Yes; it is affected by it.

Q. Now, in making your estimate of what the value of the copyright is, have you not considered how much you paid to have these volumes, from 32 to 38 or from 32 to 46, re-edited, as you say?

A. In estimating the value of the copyright?

Q. Of those particular volumes, then, you considered that; how much it cost you to re-edit them, as you call it?

A. Exactly.

Q. And you have considered that, by the payment of this money, you have entirely avoided the copyright?

A. I consider we have avoided the copyright; we have made a new book of it.

Q. Now, how much did you pay per volume to have that done?

A. $100.

Q. Is that all you paid?

A. That is all, as far as I remember. We made a contract with Mr. Ewell for 6 volumes at $100 apiece—that is, I think that was about the price paid to Denslow, but I would not swear that it was.

Q. How much did you pay for the other volumes of the Illinois Reports which were prepared by you?

By Mr. HIGH: Aside from 32 to 38.

By Mr. LE MOYNE: Any volumes that they have prepared.

Defendants' counsel objects to any testimony concerning volumes later than 38 because irrelevant and not proper cross-examination, and instructs the witness to answer no questions concerning
379 volumes later than 38.

A. I can answer only by saying I do not know how much it cost.

Q. You do not know how much it cost for any other report except from 32 to 38?

A. No, sir; the contract is not governed by the volume—it is paid by the volume, as per contract with Denslow.

Q. So, then, your testimony of the value of these books is founded on what it cost you to re-edit them, as you call it?

A. Yes, sir.

Q. From 32 to 38?

A. Yes, sir; from 32 to 38.

Q. You said in your testimony that after the reports had been on the market as long as 32 to 38 had the value would consist almost

entirely in the printed stock and plates, and not in the copyright; do you mean to say that the longer they had been on the market the less the copyright was worth?

A. I mean- in answering that question—that followed another question, I think.

Q. I will read the preceding question and your answer: "Within what period after the first publication of a volume of law reports, such as the Illinois Reports, would the first demand of which you have spoken ordinarily be supplied?" Answer. "Within two years, I should say."

A. I meant by that answer that when the first demand for a given volume of reports was filled the demand thereafter would be very small in proportion, and so long as it remained in print the probability would be that it would be smaller still, and that, therefore, the copyright would be valueless.

380 Q. Did you mean that these volumes had been so long on the market that the value of the copyright had seriously diminished?

A. It had diminished from the date of its publication; it was much smaller than it was at the date of the publication of the book or before the publication of the book.

Q. Did you mean, then, within two years within which you stated the first demand would be supplied, did you mean from that time the value of the copyright would diminish?

A. Up to the date of the destruction of the books.

Q. Up to the time that this reprint commenced, how was it? Would the copyright be worth more or less?

A. The value of the copyright, in my judgment, attained its maximum just before the book was printed. It attained its maximum, in my judgment, at the date of the destruction of the books, the plates and stock, and so forth; it then remained about what it was worth when the books were destroyed until the time when it became profitable to reprint them, until the demand had assumed a sufficiently large proportion to pay the cost of reproduction.

Q. What did you mean by saying that in 1877 the value of the copyrights of these books had become entirely, or almost entirely, in the printed stock and plates?

A. I meant to say that the demand not being sufficient to pay for the cost of reproducing the book that the copyright was worthless, the right to print was worthless when it did not pay to reprint at all.

Q. That was your estimate of volumes 32 to 38 at that time?

381 A. Practically it might have been worth something, but no one could place an estimation on it.

Q. The copyright, you mean?

A. I mean the copyright.

Q. Did not the Legal News Company print in the summer of 1877 certain books for you?

A. Yes, sir.

Q. Were you in and out or members of your firm in and out their office from time to time during the summer?

A. Yes, sir.
Q. Some of you were there almost daily, were you not?
A. Yes—well, not, perhaps, as frequently as that, but frequently.
Q. All through the summer?
A. Up to the date at which I left for the East.
Q. When was that?
A. I think it was in 1877. Do you mean 1877?
Q. In the summer of 1877.
A. I went on the 4th of July or about the last day of June, I think. I spent the 4th of July in Boston.
Q. How long were you gone?
A. I was gone six or seven weeks.
Q. Up to the time you went away were you in there frequently?
A. Up to the time I went away I was in there frequently.
Q. And when you returned you were there frequently.
A. Yes; but not so frequently after I returned.
Q. State, Mr. Callaghan, when the 38th volume of Illinois Reports was sent to press by Callaghan & Company and who printed it.

382 A. It was printed, I think, by the Chicago Legal News Company, and was sent to press—well, I cannot really tell when it was sent to press. The contract was made for it very early in the spring. I think the contract was made for it as early as February or March.

Q. Was the contract in writing?
A. The contract that governed it was in writing, but I do not think it named the volumes. I think, but I will not be certain, it is so long ago, that we contracted with the Legal News Company to give them a certain number to print.
Q. Have you that contract in your possession?
A. I do not know.
Q. I will ask you to produce it.
A. I will look for it, and if it is in existence I will get it. I think Bradwell took it. I do not think there were copies made of it.
Q. Do you not know that the Chicago Legal News Company published the same volume for Myers before they published yours?
A. I know when I came back from my trip East, in August, that I heard for the first time that the Legal News Company was printing a volume for Mr. Myers which was the identical number as ours.
Q. Do you not know that your volume was not printed by them until that time?
A. I think not. I think our book was given to them first. We had difficulty with Bradwell on account of it. He concealed the fact of his printing the volume for Myers. He exceeded his contract.
Q. You gave him your volume to print before Myers gave him his, you think?
A. Yes; I think so.

383 Q. Have you any way of fixing the date when you gave him yours?

A. No, sir; except through Mr. Denslow, or the Chicago Legal News Company might prove it, and perhaps I could from the letter written; I will see.

Q. My recollection is that Mr. Denslow testified that he was at work on the volume from April to October.

A. It might not have been published until October or later, but it was because the Legal News Company violated their contract to give place to Myers; they were bound to publish it earlier by their contract.

Q. Have you any means of fixing the date when you gave it to them to publish?

A. I cannot tell; my letter books might tell.

Q. I will ask you to examine and see in connection with this testimony.

A. I will look them up this afternoon.

Q. Please give the dates when you sent each of the reprints you have made of any of the volumes to press.

A. I will get the dates, if possible.

Defendants' counsel objects to any dates or testimony concerning volumes later than 38 as irrelevant and not cross-examination, and instructs the witness not to furnish any information as to such volumes.

Q. State whether the advertisement in the Chicago Legal News, marked "Defendants' Schedule E," was not published for the purpose of defeating Mr. Freeman from making any publication of the back volumes and to bluff Mr. Freeman; was not that the object of that?

384 A. This first part was an announcement that we would have made in any event within a short time of this date; we intended to publish volumes 19 to 38 and volume 1 just as soon as our finances would permit without regard to his announcement.

Q. Well, was not that announcement made for the purpose I have mentioned?

A. I will explain. The second part of the announcement was made with the intention of compelling him to lower the price of his books or leave the office of reporter.

Q. Have you not stated to Mr. Myers that that was the object of your advertisement?

A. What?

Q. To frighten off Mr. Freeman and compel him to desist from publishing the back volumes.

A. The object I have named to you.

Q. You named that object to Mr. Myers as the explanation of that advertisement, did you?

A. I told Mr. Myers that the object of this advertisement was either to drive Mr. Freeman from the office of reporter or make him lower his price.

By Mr. HIGH:

Q. Which part of the advertisement?

A. The lower part; the part in connection with the current volumes or subsequent volumes.

By Mr. LE MOYNE:

Q. When did you tell Mr. Myers that—at the time of its publication?

A. Yes; I think a day or two after.

Redirect examination by Mr. HIGH:

Q. With the existing demand for volumes 32 to 38 of the Illinois Reports, in the spring or summer of 1877, would it have been
385 profitable for your firm to republish those volumes had it not been for your interest in the other volumes of the series about which you have already testified?

Counsel for the complainant objected to the question as irrelevant as to what the profits of the firm might have been.

A. Decidedly not.

Q. Which part of the advertisement in the Legal News of February 24, 1877, marked "Defendants' Schedule E," do you refer to when you say that you told Mr. Myers that it was published with a view to producing certain effects upon Mr. Freeman?

A. That was the second part, and the second only.

Q. Will you indicate the part by marking on the schedule?

A. It is divided there into two parts, you will notice?

Q. You mean beginning with the words, "For ten years past there has existed in this State?"

A. I mean that part of the advertisement beginning, "For ten years past there has existed in this State a great and widespread dissatisfaction with Mr. Freeman's administration of his office," etc., and ending with the words, "Orders for these and the 21 scarce volumes, the publication of which we announce, should be addressed to Callaghan & Company, Chicago."

By Mr. LE MOYNE:

Q. When you were talking with Mr. Myers about this advertisement did you say to him this part was intended for so and so and the other part was intended for something else, or did you speak of the advertisement?

386 A. I spoke of the advertisement as a whole, I think.

Adjourned to January 15, 1879.

WEDNESDAY, *January* 15, 1879.

Met pursuant to adjournment.
Present: Same as before.

The cross-examination of ANDREW P. CALLAGHAN was resumed by Mr. LE MOYNE as follows:

By the WITNESS: You asked me to get the contract, if possible, with the Chicago Legal News Company —-ing some of these Illinois Reports. I found the contract.

By Mr. HIGH: Attach it as Exhibit No. 1 to your deposition.

A. Yes, sir; I attach it to my deposition, to be marked Exhibit No. 1. The contract itself does not state what number of the volumes were in the contract; it only provides for a number of volumes. I can give you the numbers of them.

By Mr. LE MOYNE:

Q. That they did print?

A. That they did print under this contract.

Q. Is there anything more?

A. You asked me also for the date of sending volume 38 to press. I searched through our letter book, and the letter book does not state—does not give us the exact date, but it was some time in July when the 38 was sent to press. You asked me to give you the dates of sending each volume—19 to 38—to press. I can give
387 you all those that our letter book discloses. Volume 19 was sent some time between February 17th and 24th, prior to the 24th of February. Volume 20 was sent on February 20th or 21st. Volume 21 was sent February 27th. Volume 22 was sent February 21st. Volume 23 was sent to Atwood & Company on March 7th, but, having made the contract with Mr. Freeman on March 10th or 11th for the purchase of his volume 23, the order to Atwood & Co. to print was countermanded. Volume 24 was sent February 21st. Volume 26 was sent March 12th. Volume 34 was sent July 25th. Volume 37 was sent May 28th. The other volumes not mentioned here were sent on verbal contracts or messages, or were sent directly by the editors to the printer, and not through us. I do not find their dates in our letter book for that reason. I can give you the dates of the publication of each of the volumes if you wish that, but you have already got the dates of 32 to 38.

Q. Prior to 32?

A. Yes, sir.

Q. Give them.

A. 19 was published March 27th.

Q. You mean it was issued?

A. It was issued for sale. We received it from the bindery all bound on that day. Volume 20 was received April 10th; volume 21, May 5th; volume 22, September 12th; volume 23, August 15th; volume 24, October 15th; volume 25, August 15th; volume 26, May 1st; volume 27, May 25th; volume 28, May 5th; volume 29, May 17th; volume 30, May 31st; volume 31, April 5th. The Breese volume, I did not look it up. I did not think it was necessary.

Q. Are the dates you have given the dates when you received the first copies?

A. Yes; the dates when we received them from the
388 bindery, and they were ready for sale. We bound enough for all our orders immediately and received them on the same day. Those are the documents you asked me for. The first letter that we have written to any house looking to the printing of these volumes, 1 and 19 to 38, was written to Charles Van Benthuysen & Sons, printers, in Albany, New York, dated February 12th, asking them what their price would be for stereotyping volumes 22, 26, 30, 34, and 38. It is dated February 12th, and found on page 636 of letter book number 36, and made an exhibit to my deposition, to be marked No. 2. The next letter was to the same parties, asking why they had not answered our enquiry; that is dated February 17th. I attach it to my deposition, marked Exhibit No. 3. The next is dated February 19th, addressed to Atwood & Culver, of Madison, Wisconsin, also printers, which I attach to my deposition as Exhibit No. 4. The next is on the same date, addressed to Mills & Company, printers, Des Moines, Iowa, which I attach to my deposition, marked Exhibit No. 5. The next was dated February 21st and addressed to Messrs. Charles Van Benthuysen & Sons, which I attach to my deposition, marked Exhibit No. 6. We made a verbal contract with Marder, Luse & Company, printers, or rather stereotype foundry, on Monroe street, Chicago, about the same time, for two or three of the volumes.

By Mr. HIGH:

Q. These letters are all taken from your regular letter-press book kept by you at the time?

A. Yes, sir; letter book number 36. Resulting from that letter to Atwood & Culver, we made a verbal contract here at the store;
389 one of their men came down here to make the contract, and he made it here for four of these volumes.

By Mr. LE MOYNE: Two of them were naked reprints and two of them were re-reported volumes of 32 to 38.

Q. The two you call naked reprints were two preceding 32?

A. Yes; two of those preceding 32 and two subsequent to volume 31.

Q. In March, 1877, how many volumes of the Illinois Reports had already been reprinted?

A. In March, 1877?

Q. Yes.

A. Well, without referring to my memorandum I could not tell you.

Q. I do not refer to the ones you have specified as having been reprinted by you.

A. There was only one volume issued as early as March; that was the 19th.

Q. Had not volumes 1 to 18 been reprinted?

A. Two to 18 had been reprinted many years before by Mr. Gilbert, of St. Louis.

Q. Had you not purchased those reprints from Mr. Gilbert?

A. We had.

Q. And you had them in stock?

A. Yes, sir.

Q. And had not Mr. Myers been buying from you during the preceding year of those volumes?

A. I believe he had.

Q. And was not that the principal purchases that he made from you of books; did it not consist principally of those reports?

390 A. I cannot state that, but I presume that he bought as much of those as anything else. I cannot tell without looking at the books what portion of his purchases were Illinois Reports.

Q. What had been the price charged for those books?

A. The price charged——

Q. I mean to him by you.

A. Either $5.00 or $6.00 a volume; I have forgotten which.

Q. It was a high price?

A. Either five or six dollars a volume; I cannot tell whether it was high or not.

Q. Well, it was from five to six dollars a volume?

A. Five or six; somewhere along there.

Q. State when the firm of Callaghan & Co. designated to the Chicago Legal News what volumes they would have printed under this contract?

A. I cannot answer that question.

Q. Was the 19 the first that he printed for you?

A. No.

Q. Was the 27th the second? If you can tell by looking at the contract the order in which they were designated, please do so.

A. From my memorandum I would say 27 was the second and 28 was the third; 33 was the fourth; 37 was the fifth; 38 was the sixth. They were printed in the order of receipt, I believe.

Q. At the time you made this contract, did you represent to the Legal News Company the form of the copy to be furnished, whether it was to be printed or written?

A. I cannot recollect precisely that point; we had designated to the other parties to whom we had written that there were two kinds of printing to be done, and I presume I mentioned the same to Judge Bradwell.

Redirect examination by Mr. HIGH:

391 Q. Was this contract with the Legal News Company which you have offered in evidence executed on the date which it bears?

A. It was.

Q. You have spoken of a verbal contract that you made with Atwood & Company, of Madison, Wisconsin, as following a letter to those gentlemen, which you have just produced in evidence. What

was the date and place of making that verbal contract, with reference to the date of the letter referred to?

A. It was in our store, about the 20th or 21st of February.

Q. What volumes of your reprints did you furnish to Atwood & Co. under that verbal contract?

A. They printed volume 20, volume 26, volume 32, and volume 34; the contract was for two volumes of one kind and two volumes of another; those were the first four volumes printed.

Q. What do you mean by saying two volumes of one kind and two of another?

A. Two of the literal reprints between 19 and 31, and two of the re-reported volumes, 32 to 38, inclusive.

Q. Between 32 and 38?

A. Yes, sir.

Q. In answer to a question just asked you by complainant's counsel you have stated that you had, in March, 1877, volumes 2 to 18 of Underwood's Illinois Reports; I will ask you whether those were reprinted by you or whether they were owned by you, as originally printed by Underwood?

A. They were owned by us, the stock having been bought from the publisher, W. J. Gilbert, of St. Louis.

Q. Then you did not reprint volumes 2 to 18?

A. We did not.

Q. When were those reprinted?

A. I think in 1869 and 1870.

Q. You had bought the entire printed stock?

392 A. We had all the remaining stock.

Q. And the copyrights?

A. And copyrights.

Q. In answer to a question asked you by complainant's solicitor in cross-examination yesterday you stated that Mr. Myers had refused to give a written stipulation in conformity with the requirements of Mr. Freeman's contract concerning the sale of Illinois Reports; have you been able to find any letter or correspondence that refreshes your recollection on that point?

A. Yes; I found a letter last night written to Mr. Freeman, in which I stated that Mr. Myers——

Objected to.

Q. Will you produce that letter?

A. Well, I cannot do it now; that was not one of those I brought over; I think it was in April.

Q. Can you produce it before the master, to be attached as an exhibit to your deposition?

Solicitor for the complainant objected to defendants putting in any letters written by themselves to parties not parties to the suit. (Said letter produced and attached to the depo. — the witness, marked Exhibit F.)

Q. State whether you sold to Mr. Myers at any time during the

year 1877 any of the reprints of the volumes 32 to 38, inclusive; if so, which volumes and on what dates.

A. On June 2, 1877, I sold, with other books, volume 32, Illinois Reports.

Q. Did you sell any others during the year 1877; if so, what volumes?

393 A. On November 27th I sold volume 33.

Q. At what price did you sell those two volumes to Myers?

A. Volume 32 was sold at six dollars and volume 33 was sold at $7.50.

Q. At what price were all the volumes of your reprints from 32 to 38 sold to Myers, which were sold to him during the year 1877?

A. All were sold at $6.00 a volume, up to the sale of volume 33 on November 27th.

Question and answer objected to as not proper re-examination.

Q. State whether in searching for these documents which have been called for by complainant's counsel you have found any letter or letters from Mr. Myers relating to these reprints?

A. I found one letter from Myers.

Q. Will you produce that letter?

A. It is dated December 1, 1877, addressed to Callaghan & Co., signed E. B. Myers.

Q. State whether you received that letter in person.

A. I received this letter in person and read it.

Solicitor for the defendants offered in evidence the letter in question and attached it to the deposition of the witness, marked Defendants' Exhibit G.

By Mr. Le Moyne:

Q. Have you got any other letters from Mr. Myers which you have not produced on this subject?

A. I could not find any.

Q. Have you looked for any?

A. I have.

Q. And you know of no others?

394 A. I know of no others; I did not look for this letter. I simply found it looking after these memorandums.

By Mr. High:

Q. State whether you are familiar with the handwriting of Mr. Myers and whether this letter marked Exhibit G is or is not his handwriting.

A. I am familiar with it, and that is his handwriting.

Q. And his signature?

A. And his signature.

By Mr. Le Moyne:

Q. Will you pleaes produce and have attached here the original letter written by Mr. Myers to your firm, dated February 16, 1877,

a copy of which is filed, attached to Mr. Myers' affidavit in this cause?

A. I will look for it.

Q. Also look for the letter from Callaghan & Co. to Myers, attached to the same affidavit, dated February 16, 1887, and state in whose handwriting it is.

A. This is my handwriting.

Q. Was it written at the time it bears date?

A. It was.

By Mr. HIGH:

Q. In your cross-examination yesterday you were asked by complainant's counsel this question: "You do not know what the price of 39 to 46 then was—the retail price?" In the report of your testimony before me you are made to answer, "No; they had different prices; they run from four dollars to five dollars." Was that what you said or what you meant to say in answer to that question with reference to the price of those volumes in the spring of 1877?

A. I do not think it is what I said. I know it is not what I intended to say.

Q. What did you intend to say?

A. I meant to say that the price of the Illinois Reports, 39 to 46, inclusive, had fluctuated from time to time all the way from ten dollars to four dollars.

395 Q. During what interval of time would that fluctuation, about, occur?

A. From 1872 to date, or from 1871 to date.

By Mr. LE MOYNE:

Q. Well, there were none of those volumes sold at ten dollars in the spring of 1877, to your knowledge, was there?

A. Not, except volume 46, and I am not sure about that.

Q. You cannot say that any of them were sold at ten dollars during the year 1877?

A. No; I cannot say what the prices were, positively, during that year.

It is stipulated by counsel that the signature of the witness to his deposition should be waived.

Witness afterward produces original letter of Myers to Callaghan & Co., dated Feb. 16, 1877, above referred to, and the same is annexed to his deposition and marked "Exhibit H" to deposition of Andrew P. Callaghan.

396 EXHIBITS.

Dep. of Andrew P. Callaghan.

Chicago Legal News of Feb. 17, '77.

Copy of exhibit attached to deposition of Andrew P. Callaghan.

"Announcement. Illinois Reports, re-reported and annotated, vols. XIX to XXXI, inclusive.

The decisions of the supreme court of Illinois embraced in these volumes have for years been out of print. Their republication has long been demanded. The State has, at different times, been urgently solicited to reprint them, but without avail. The large amount of capital required, the limited sales, the slow returns, and the meager profits were considerations potent enough to deter private enterprise from undertaking the work.

The undersigned, at the solicitation of the bench and bar of the State, and in the hope of ultimate recompense, undertook the arduous labors and incurred the financial hazard of re-reporting, annotating, and publishing these scarce decisions of our court of last resort. For more than twelve months past they have been thus engaged. Every case has been carefully re-reported, the head-notes and statements of the case made to conform to the general style of the current volumes of the Illinois Reports, and such annotations and references made to other decisions and to the statutes as seemed to be necessary.

They have also secured the right to reprint Beecher's Breese, and will issue it as one of the series.

For obvious reasons this announcement has been delayed until the present, when the initial volumes are about to issue from the press. The greater part of the work is done, and the new
397 volumes, now in stereotype plates, will be issued from the press as rapidly as a due regard to mechanical excellence will allow.

In typography, paper, printing, and binding, the new volumes will fully equal the best American reports, and will be supplied to subscribers for the series at $5 per volume. Single copies, $6. Where the money does not accompany the order, the books will be shipped C. O. D. When copies are directed to be mailed the necessary postage will be added. In all cases the purchaser will pay the cost of delivery. No attempt will be made to issue the volumes in their numerical order. Those which can be first made ready will be first issued.

NORMAN L. FREEMAN.
WILLIAM L. GROSS.

Springfield, Ill., Feb. 7th, 1877. 22–24

398 DEFENDANTS' SC-EDULE "E" — Deposition of Andrew P. Callaghan.

Legal.

Chicago, Saturday, February 24, 1877.

A new edition of the Illinois Reports.

Since the great fire in Chicago, in 1871, complete sets of the Illinois Reports could be obtained only with the greatest difficulty and at exorbitant prices, owing to the scarcity of the volumes, the plates and stock of which were then destroyed.

These volumes, viz., Breese, 1 volume, and Illinois Reports, volumes 19 to 38, inclusive, we have now in press, and will issue at the rate of one volume per week, beginning March 15th and continuing until all are published.

The price of single volumes will be $6 each and of sets of the 21 republished volumes $105.

For ten years past there has existed in this State a great and widespread dissatisfaction with Mr. Freeman's administration of his office of reporter of the supreme court. Resorting to all the book-making arts of reducing the matter on each page by "leading," lengthening out syllabi, statements of cases, and briefs of counsel; ignoring the law which fixed a maximum price on the reports to be sold to the profession, and demanding a much higher one; delaying the preparation of the different volumes of decisions so long that neither bench nor bar could tell the actual state of
399 the law on many points, and treating the complaints which this course of conduct produced with the most contemptuous indifference, are some of the reasons why this dissatisfaction has grown to something very like indignation.

And now, as if to crown all, while he is behind from one to three years in his work as reporter, while there are supposed to be decisions enough filed and not reported to keep one man busy for at least two years, he informs the profession that for twelve months past he has been engaged on the work of "re-reporting, annotating, and publishing" fourteen of the volumes, the publication of which we have announced above.

We cannot cure all the evils we describe, but, with the assistance of the bar, we can and will cure one of them.

The price now demanded for the current volumes of reports ($5.00 per volume) is just double what it should be in a State so large and populous as Illinois. We propose, through the force of competition, to reduce it to its proper figure.

☞ Within sixty days after the publication of a new volume we shall cause it to be re-reported and annotated, and shall publish and sell it for $2.50.

In order to make this project successful the members of the profession who have waited three years for Mr. Freeman have only to wait two months longer for us. We ask them to do this for their

own sakes, for it is the only sure remedy now within their control. The volumes we shall so republish will be no condensation. They will bear the official paging and will be annotated with refer-
400 ences to other and analogous cases on the same subject. They will be superior in all respects to the original volume.

Orders for these and the 21 scarce volumes, the publication of which we announce, should be addressed to—

CALLAGHAN & COMPANY, *Chicago.*

401 DEFENDANTS' EXHIBIT H to Deposition of A. P. Callahan.

Chicago Law-Book House (established A. D. 1860), E. B. Myers, law publisher, 93 Washington street.

CHICAGO, *Feb'y 16th*, 1877.

Messrs. Callaghan & Co.

GENTS: I am in the receipt of your note. Any one would judge from its import that I had committed an error or a great wrong simply in declining to sell my own property for less than its value.

The amount you offered, at 8%, will be much less than the property earns me, which, to a prudent man, is a sufficient reason for declining to sell.

Resp'y, E. B. MYERS.

402 DEFENDANTS' EXHIBIT G to Deposition of A. P. Callaghan.

E. B. Myers, law-book publisher and dealer, 93 Washington street. Established A. D. 1860.

CHICAGO, *Dec.* 1, 1877.

Messrs. Callaghan & Co.

GENTLEMEN: I have your note of this date complaining because I charge you $5 per volume for my reprints of the Illinois Reports. My best answer seems to be that you did a month ago, without notice, advance your price to me to $7.50 pr. volume on vols. 1 (Breese) to 38, inc. You also did, without notice or cause, advanced your charge to full retail price for Moore's Justice.

I have no right to question your mode of transacting your business, nor will I permit you to question mine.

Resp'y, E. B. MYERS.

403 EXHIBIT No. 1 to Deposition of A. P. Callahan.

The Chicago Legal News Company agrees to do the composition for 6 volumes of reprint of Illinois Reports in small pica and brevier type, same fount as Ewell on Fixtures, and make the stereo. plates for 80 cents per thousand, and press-work, 500 impressions of 16 pp., at 62½ cents per token for Callaghan & Co.

The first volume to be delivered to the binder within 20 working days from this date and one volume every three weeks thereafter until the six volumes are completed.

Said Callaghan & Co agree to furnish the copy for the above six volumes and paper in due season and pay the prices above stated by giving their notes therefore, payable in three and six months from the date each volume is delivered to the binder.

Chicago, Feb'y 17, '77.

CHICAGO LEGAL NEWS CO.,
By J. B. BRADWELL.
CALLAGHAN & CO.

404 EXHIBIT No. 2 to Deposition of A. P. Callahan.

FEB'Y 12, '7.

Mess. Chas. Van Benthuysen & Sons, Albany, N. Y.

GENTLEMEN: We are now ready to go into the Illinois Reports reprint. Please let us know for how much pr. M you can stereotype vols. 22, 26, 30, 34, & 38. We want good plates and we want your very lowest figures at 3 & 6 months from date of publication with a guarantee to furnish one vol. per month or else extend the time to 6 & 12 months (in each case without interest) on such vols. as you fail with.

You are to read the proof and become responsible for all typographical errors, as the proof will not go out of your office.

Give us also your figures on press-work & binding 500 of each. You will have competition on this work, and if you want it must make figures that will control it.

Please reply at once and oblige—

Very truly yours, CALLAGHAN & CO.

405 EXHIBIT No. 3 to Deposition of A. P. Callahan.

FEB'Y 17, '7.

Mess. C. Van Benthuysen & Sons.

GENTS: Why don't you answer ours of last Monday relating to Ills. Rep'ts?

If we don't hear from you by return mail we will let the contract to other parties. We cannot wait in this matter.

Very truly yours, CALLAGHAN & CO.

406 EXHIBIT No. 4 to Deposition of A. P. Callahan.

FEB'Y 19, '7.

Mess. Atwood & Culver, Madison, Wis.

GENTLEMEN: We are now ready to go on with the reprint of the Illinois Reports, and have made already contracts for six of them and expect to make another to-day for three more and on Wednesday for 5 more. These contracts have been and will be placed at 80c. or under.

If you wish to take four or five of the vols. at that let us hear by return mail, as we must decide at once.

You must give us one volume printed in 3 weeks from receipt of copy and the succeeding vols. at intervals of not more than 3 weeks.

Proof will not leave your office and you are to be responsible for its correctness; terms, as usual. If you see fit to do them sooner than we suggest you may do so.

There will probably be quite a number of other vols. to follow this.

407 EXHIBIT No. 5 to Deposition of A. P. Callahan.

FEB'Y 19, '7.

Mess. Mills & Co., Des Moines, Ia.

GENTLEMEN: We are reprinting the scarce vols. Illinois Reports—vols. 19 to 38, inclusive. What can you do the comp. & stereotyping of, say, 2 vols. for, small pica & brevier, the proof to be read by yourselves (it is a literal reprint, with no editing), there being no MSS. matter, terms, 3 & 6 mos.? Press-work we will give 50c. pr. token, 16 pp., on a run of 500 copies.

If you are as low as others you will get two vols., but you must bid low. Mr. Clarke says you complained to him that we did not desire to give you work; that is a mistake; if you give as good work for as little money as others you will get the job.

The first vol. must be ready in one month and the second in two months.

Answer by return mail & oblige—

Very truly yours, CALLAGHAN & CO.

408 EXHIBIT No. 6 to Deposition of A. P. Callahan.

FEB'Y 21, '7.

Mess. Chas. Van Benthuysen & Sons, Albany, N. Y.

GENTLEMEN: Your favor of the 19th arrived too late to obtain the whole of the vols. we intended giving to you. We can give you only three of the vols. where the proof does not leave the office and the other two vols. will be reports, the opinions of which will be printed matter, proof of which will not go out, but syllabi, &c., & index of which will be manuscript, plate proofs of which will probably do, and you can send large batches at one time, so that in effect it will be as handy as if you did not send proof.

Your figures will do, except the press-work, which is nearly double what we pay anybody else. Can you not reduce this to 50 cts.? We want one modification of your offer, and that is it must be understood that the vols. must be printed and bound within two months. It will not do to let the notes for plates commence running when they are finished and then delay press-work and binding indefinitely.

We send you vols. 22 & 24, Ills. Reports, by express, paid, to-night. You are to correct the book by the table of errata. Print in small pica & brevier leaded, but not too heavily; size page S. 9, 27 x 50 ems. The paging of the old edition to be carried into the
409 star paging & that star paging to be carried (without the star, of course) to the top of the page.

The paging of the new edition may be put at the bottom of the page, as in Cooley's Blackstone.

We want a neat font—the type in vol. 2, Pinney, if possible.

If there is to be any increase of your price for comp. & ster. because of the substitution of 2 vols., part of proof of which will be read here for 2 vols. of the other kind, let us know before you commence work; if not, go ahead at once.

If anything be obscure or lacking write promptly & fully, and oblige—

Very truly yours, CALLAGHAN & CO.

410 In the Circuit Court of the United States for the Northern District of Illinois. In Chancery.

EUGENE B. MYERS, Complainant,

vs.

BERNHARD CALLAGHAN *et al.*, Defendants.

Testimony taken before Henry W. Bishop, master in chancery of said court, Friday, the 17th day of January, A. D. 1879.

Present: J. V. Le Moyne, Esq., solicitor for the complainant, and James L. High, Esq., solicitor for defendants.

BERNARD CALLAGHAN, a witness called on behalf of the defendants, being first duly sworn, was examined in chief by Mr. HIGH, and deposes and says as follows:

Q. State your name, age, residence, and occupation.

A. Bernard Callaghan; age, about 56; residence, Chicago; occupation, that of a law-book seller and publisher.

Q. Are you one of the defendants in this case and one of the firm of Callaghan & Co.?

A. I am.

Q. How long have you been a member of that firm?

A. Since 1871 or the beginning of 1872—since the firm was in existence.

411 Q. How long have you been engaged in the law-book business as a proprietor and publisher?

A. Nearly 15 years; since the spring of 1864.

Q. State whether you consider yourself as familiar with the usages and customs of the trade and methods of doing business in that trade?

A. I am.

Q. Usages in regard to purchases and sales of books, etc.?

A. I am.

Q. State whether, at any time during the year 1877, you had any interview or conversation with the complainant, Mr. Myers, concerning your republication of volumes 32 to 38 of the Illinois Reports; if so, when and where was such interview or conversation had?

A. I did have such conversation at my store, I think, in the latter part of June.

Q. Who was present at that conversation?

A. Mr. A. P. Callaghan, my partner, was present at the most of it.

Q. Andrew P. Callaghan, yourself, and Mr. Myers?

A. Yes, sir.

Q. How did that conversation or interview come about—at whose request or instance?

A. I think it was at my own. I had either sent or asked Mr. Myers to come and have an interview with me on that matter.

Q. For what purpose?

A. For the purpose of making some arrangement by which we could put complete sets of Illinois Reports on the market to supply the demand.

Q. Now, begin at the beginning of that interview and state what was said by both parties, as near as you can recollect, giving
412 the substance—what Mr. Myers said and what you said.

A. Well, there was a good deal said by both of us; perhaps I could not give the exact language. The substance was that we tried to make some arrangement by which we could complete sets, either by purchasing his volumes 39 to 46, inclusive, from him in quantities as we might want them or by buying out his plates and copyright of those volumes, and thereby enable us with our own reprints to make complete sets.

Q. You mean that that was talked over?

A. Yes, sir.

Q. The furnishing of complete sets?

A. Yes.

Q. State whether Mr. Myers made any proposition or offer to sell or exchange his volumes 39 to 46 in that interview. If so, what did he say upon that point or with reference to 32 to 46, if he said anything about that?

A. He said he would sell us his volumes that he had a stock of, 39 to 46, inclusive, for the same price that we would charge him for our reprints. I asked him then what he meant by our reprints; we have a good many; that I did not know whether he called them our reprints or not; we owned the first 18 volumes, which we did not reprint, but we had large quantities of them on hand; and he said he meant all our reprints.

Q. Was anything said about your reprints of 32 to 38 by him or you?

A. Yes, sir; that was to include the reprints of 32 to 38, inclusive.

Q. What reply, if any, did you or your partner in that interview make to him as to this first proposition?

A. We stated to him that it would be unreasonable for him
413 to expect that; that he could manufacture them for about $1.00 a volume—a fraction less, perhaps—and that our reprints were a matter that would not pay for a long time to come, and we could not, of course, put them at the same price that those books could be manufactured for from those plates. They had already paid for those, and all that was obtained from them in future was clear profit, except about $1.00 a volume

Q. You mean you gave him all those reasons for not accepting that offer?

A. Yes, sir.

Q. What was finally done with that offer; was it accepted or rejected by you?

A. It was neither accepted nor rejected. Mr. Myers said when he was leaving that he would consider it and that if he decided to accept it he would let me know by the following Monday. I think that was on Thursday or Friday.

Q. Well, was any offer or proposition made in that connection looking to a fixed price for the entire interest that he had—all the stereotype plates, copyrights, etc.? If so, what offer was made about that?

A. Yes, sir; he offered his entire interest, including what he assumed to be his interest in 32 to 38, inclusive, and also the plates and stock, etc., of 39 to 46 and copyrights. He offered all to us for $7,000.

Q. What was done with that proposition at that interview?

A. We declined it.

Q. Now, did you, in turn, or Andrew, make any offer to him for the same property mentioned? If so, what?

A. We did; we offered to give him what I had understood we had offered them some time before—$5,000 for all this interest, less the amount that we had already paid out in reproducing and
414 re-editing volumes 32 to 38, inclusive; less that amount, we offered to give him $5,000.

Q. What did he say to that with reference to volumes 32 to 38, if anything?

A. Well, that was the proposition which he did not decide on.

Q. You mean that that is the proposition that he took under advisement?

A. That was the proposition that he took under advisement, and said if he would accept it he would let us know on the following Monday.

Q. So that it was not either accepted or rejected at that interview?

A. It was neither.

Q. State whether in that connection he said anything to you, and, if so, what, as to his willingness or unwillingness that you should reprint any of the volumes from 32 to 46?

A. Well, he stated that he did not care what we did with 32 to 38, inclusive; that what he cared about was the volumes that he had stock and stereotype plates of, namely, 39 to 46.

Q. Did you then know, as a matter of fact, that he did have the stock and plates of 39 to 46?

A. Yes, sir.

Q. What, if anything, was said by you or your partner to him in this interview concerning amounts that you had already paid or incurred for the re-editing of volumes 32 to 38?

A. Well, we did not give him the exact amount that we had paid on all of them. We did state the amounts that we had paid on re-editing some of them. I do not now recollect how many of those volumes 32 to 38. We did not state the amount we were
415 paying or had contracted to pay, but give him an idea—I think a pretty clear idea—of the state they were then in—

about the state they were then in—how many volumes were under way and how far we had progressed on them. I also stated to him that if we were to conclude an arrangement then that perhaps we could arrange with some of our editors, that we had contracts made with, to let up on those contracts, and save the expense, so that we would be able to give him nearer the $5,000 than we otherwise would if they were to go on and exact all that we had contracted to give them.

Q. What was the condition of your reprints of volumes 32 to 38 at the time of this interview with reference to whether anything had been done by way of editing or printing any of them?

A. I could not tell exactly. I think we had several of them under way, both in the printing office being printed and, I rather think, the editing of all of them contracted for. I am not entirely sure that all were contracted for, but I think they were.

Q. Now, did you say anything to him in that interview with refence to the then condition of those volumes, by way of explaining it to him?

A. Certainly I did.

Q. Did you explain that fully to him?

A. I think pretty fully.

Q. You told him the condition in which they then were, whatever that condition was?

A. Yes, sir; as near as I could get at it without going and getting the exact facts from the printers or the contracts we made—as near as my memory would enable me to do it.

416 Q. How long did this interview last?

A. I think it lasted perhaps half or three-quarters of an hour. I should think all of that.

Q. I think you said a few minutes ago, with reference to his proposition to you to furnish you volumes 39 to 46 at the same price at which you would furnish him your reprints, that that offer was taken under advisement. You mean that that offer was taken under advisement, or one of them?

A. I meant that the whole offer was taken under advisement.

Q. The offer in aggregate of $5,000?

A. Yes, sir; less the amount we had already paid or contracted to pay.

Q. That is the offer that you mean was taken under advisement?

A. Yes, sir.

Q. And he was to give you an answer the following Monday?

A. Yes, sir.

Q. What do you mean with reference to his proposition to you to let you have volumes 39 to 46 at the same price at which you would furnish him your reprints. Was that accepted or rejected at this interview?

A. It was rejected by us.

Q. Well, then, you must have misunderstood my question on that point a few minutes ago, because, as I now recollect, you then answered that that was taken under advisement.

A. I corrected myself afterwards and said that it was the other proposition of $5,000 that was taken under advisement—$5,000, less the amount that was paid. At least I intended to have corrected myself in that.

Q. What was the general tenor of this interview, as to being friendly or unfriendly?

417 A. Well, a considerable portion of it was friendly. There was some little sparring between Mr. Myers and my partner, I think, more than between him and myself; some little criminating and recriminating, perhaps.

Q. About old transactions?

A. About old sores and old matters.

Q. Now, you have said that the $5,000 proposition was taken under advisement, and that he was to have until the following Monday to consider it.

A. Yes, sir.

Q. Was anything arranged or said as to his giving you notice of his acceptance?

A. He was to give notice if he should accept.

Q. State whether he ever did give you any notice of accepting that?

A. He did not, to my knowledge.

Q. I will ask whether in this interview in June, of which you have been testifying, or at any other time before then, Mr. Myers ever made any statement to you; and, if so, what, with reference to any intention on his part of reprinting volumes 32 to 38?

A. He had told us that he would not reprint them; that it would not pay to do it. It was so well understood between him and us that the last part of the time we did not talk to him about it nor he to us. He gave us to understand after the fire that he would not reprint them. He gave us a list of the volumes he could furnish and those he could not furnish.

Q. When did he give you such a list?

A. Well, after the great Chicago fire of 1871.

Q. State whether at any time after the fire of 1871 you applied to him for any volumes between 31 and 39?

418 A. We certainly did. I could not state the exact time. We had been having calls for them, and we went over to Mr. Myers, he being the publisher of them, and he told us he could not furnish them.

Q. How soon after the fire was that?

A. I should say it was soon after the fire; perhaps not immediately after.

Q. State whether he, soon after the fire, did furnish you with a list of the volumes that he could supply you with for your trade.

A. He did.

Q. What volumes were those?

A. They were volumes 39 to 45. He stated that he could not furnish 46 at that time.

Q. He reprinted that some years later, as I understand?

A. Yes, sir; he reprinted it some years later.

Q. What was the condition of the market generally during the years 1872, 1873, and so on down to the year 1877, with reference to supplying volumes 32 to 38 of Illinois Reports?

A. They could not be supplied, as we understood it, except by picking up second-hand copies occasionally, except 39 to 45.

Q. The question was with reference to volumes 32 to 38?

A. They could not be supplied, except when picked up second hand; at least we could not procure them from either Mr. Myers or anybody else, and we did not have them.

Q. Except second hand?

A. Except when we would pick them up second hand here and there, a volume at a time, more or less, as we could get them. Then we were paying very large prices for them in any shape we could get them; we were willing to pay large prices.

419 Q. When did you first learn that Mr. Myers contemplated reprinting any of the volumes from 32 to 38?

A. I do not think that we learned it—I know I did not—until, I think, he had one volume out, which was some time in the summer.

Q. Of what year?

A. Of 1877.

Q. Which volume was that?

A. I do not recollect.

Q. Was it one of the two volumes, 37 or 38?

A. It was.

Q. And that was the first knowledge or intimation that you individually had of any intention on his part to reprint those?

A. It was. I got that from the printing office.

Q. What printing office?

A. The Legal News Company.

Q. Where it was then being printed?

A. The fact is we had a quarrel with Bradwell over it. He asked us to let him up on our work, on some of the Illinois Reports that we were printing.

Q. Some of these reports?

A. Yes, sir; having a job that he was in a great hurry with. We did let up on Mr. Bradwell, and we learned afterwards to our chagrin that it was one of those volumes for Mr. Myers.

Q. Either 37 or 38?

A. Yes, sir. We thought it was other work that Bradwell wanted us to let up on for, and when we found it was not we were very angry with him about it.

Q. What, in your opinion as a law-book dealer with 15 years' experience, as you have testified, was the value of Mr. Myers' copyright, if any he had, in volumes 32 to 38 during the year 1877?

A. I think it was about worthless.

Q. What reasons, if any, can you give for that opinion?

420 A. The reasons that Mr. Myers gave himself; that it would not pay to reprint them; the copyright would be worthless to anybody that could not utilize it, and it was not considered by either him or us, as I understand it, that it would pay to reprint.

Q. State whether, in your opinion as a dealer in law books, it would have been profitable for your firm to reprint these volumes, 32 to 38, had it not been for the control you then had over other volumes of Illinois Reports.

A. It would not have been; I think it has not been, as it is, yet.

Q. What is the effect upon the market value of a volume of law reports or upon the value of a copyright in a volume of law reports when it has been sold in the market and to the profession for a considerable number of years as volumes 32 to 38 had been in the year 1877?

A. It was of very little value, if any.

Q. What reason, if any, can you give for that?

A. That is, provided the book was out of print?

Q. I mean with books out of print, as volumes 32 to 38 then were.

A. It was of very little value, if any.

Q. What reason can you give for that, if any?

A. Because the first edition of a report generally supplies the market to such an extent that it seldom pays to reprint those volumes, and, I think, never, except the party owns the balance of a set and it is necessary to reprint one in order to aid in selling the others.

Q. Within what time after the publication of an ordinary volume of law reports is the first or principal demand for them ordinarily exhausted?

A. The great demand is generally exhausted, or nearly so,
421 in six months. They have considerable of a sale, though, for one or two, or perhaps between two and three years.

Q. After that time what is the effect upon the sale, if any?

A. Well, the sale is very limited then.

Q. State whether there is anything in the general usage of the law-book trade, in purchases and sales of law reports, where the entire stock and plates of an edition are purchased by a publisher from a reporter, with reference to the value attached to the copyrights in effecting the trade.

A. There is very little value attached to the copyrights; the principal value is laid upon the plates and stock.

Q. What is ordinarily done in transactions of that kind with reference to the transfer of the copyright or the value, if any, that is usually attached to it in such transactions?

A. Well, I think all law-book houses, in making purchases of that character, expect to get about the full value in stock and plates for what they pay. They lay very little stress on the copyright, I assure you.

Q. Is it not true that in many instances of that kind, where a publisher is buying the edition of a volume of law reports, including the stereotype plates and stock on hand, that the copyright is thrown into the trade without any additional value attached to it?

A. It generally is. I think we have made some purchases that we did not think worth our while; where we bought out a stock, and where the books were not stereotyped, I think we have made

some purchases of reports where we did not think it worth while to have the copyrights conveyed to us.

422 Q. Where you took no assignment of the copyright?

A. Where we took no assignment.

Q. And only took the stock and plates on hand?

A. Just took the stock. There were no plates. Just took the stock of books.

Q. The printed stock?

A. The printed stock.

Q. Can you mention any purchases of this kind made by your house in recent years or at any time when the copyright was thrown in in the way you have said, or no particular value attached to it? If so, mention some such.

A. Well, I think not, by the present house. I think the purchases we made would date prior to the existence of the present firm. Callaghan & Cockcroft, of which I was the senior member, made such purchases.

Q. Can you mention any such?

A. Well, from Prof. O. M. Conover, of Madison. We purchased his stock.

Q. The reporter of the Wisconsin Reports?

A. Yes, sir; and Judge Spooner.

Q. Who was Spooner?

A. He was formerly reporter of the supreme court of Wisconsin.

Q. Prior to Mr. Conover's reportership?

A. Yes, sir; I think Phillip Spooner is his name.

Q. What was done in that regard in the case of your purchase from Mr. Spooner of his stock of Wisconsin Reports?

A. Well, we purchased the stock of him, and they said they would put the copyright in, and we said all right or something to that effect. We did not have it done at the time. It was a long while afterwards before we thought it would be worth while to have the copy-

423 right transferred to us. We finally did have the copyright transferred.

Q. State whether you paid any other or additional compensation when the copyright was finally transferred in that case?

A. We did not. We also made purchases from Mr. Candee, of Milwaukee, on the same basis.

Q. What reports, if any, did he have?

A. Some of the earlier volumes prior to Conover's; Judge Smith's, I think.

Q. Of the Wisconsin Reports?

A. Yes, sir. I stated in my testimony that I thought we had made purchases where we did not think it worth our while to have the copyright transferred. I had then in my mind a purchase of South Carolina Reports, where we purchased the entire stock, I think, of in the neighborhood of 60 volumes. I think we purchased somewhere between nine and ten thousand volumes of those South Carolina Reports.

Q. The printed stock on hand?

A. Yes, sir.

Q. And did not deem it worth while to have the copyrights assigned?

A. No, sir.

Q. Was that done by the present firm of Callaghan & Co.?

A. It was, I think; I am quite sure it was; I think so; yes, sir; by the present firm, since the fire.

Q. Do any other cases of that kind now occur to you?

A. Well, I think we laid very little value on the copyright of Cooley's Michigan Reports and the transfer of that.

Q. Did you buy those reports of Judge Cooley?

A. Yes, sir.

Q. The ones that he had reported when he was reporter?

424 A. The eight volumes that he reported of the Michigan State Reports; I think the principal amount that we paid him for was for the annotating and re-editing of them.

Q. Do any other instances of that kind occur to you?

A. I do not recollect any other now.

Q. Look at the printed circular now shown you, which is annexed as an exhibit to the deposition of Mr. Myers in this case, and state where you first saw that circular.

A. I think I never saw it before to-day.

Q. State whether at any time prior to the commencement of this suit you ever heard in any way of that circular, directly or indirectly.

A. I never did.

Q. Mr. Myers has testified in his deposition in this case that about the month of February or March, 1877, he sent a circular somewhat similar to that announcing his intended republication of Illinois Reports to the profession. This circular, he says, was sent to the trade, the other circular, he says, he sent to the profession about the same time. Q. State whether you ever saw any such other circular as he has testified to as having then been sent by him to the profession of the State.

A. I did not.

Q. State whether you ever heard in any way, directly or indirectly, of any such circular prior to the commencement of this suit?

A. I did not.

Q. What was the fact during the year of 1877 as to the firm of Callaghan & Co. having salesmen employed in travelling

425 through this State in the course of their business.

A. We had such.

Q. Travelling in what parts of the State, do you mean?

A. Nearly all over it; making a tour of one section of the State on one trip and then the next trip taking the next section of the State; we calculated on going all over the State.

Q. Did you have salesmen or employees going about more or less during that year among the lawyers in Chicago also?

A. We did.

Q. What was the fact, during the year 1877, as to members of the legal profession from different parts of the State visiting your store; to what extent did they visit it?

A. Quite a large number of attorneys from different sections of the State visited our store quite frequently.

Q. Is it not the fact that they were in more or less every day during that year and always are in all years?

A. Yes, sir.

Q. State whether during 1877 you received any knowledge or information from any of these travelling salesmen or from any lawyers or members of the legal profession visiting your store — otherwise concerning either of those circulars testified to by Mr. Myers?

A. I did not.

Q. What was the fact as to the communication between the firm of Callaghan & Co. and Mr. Myers in the course of their business during the year 1877, as to whether there was more or less communication back and forth?

A. Yes, sir; there was, more or less.

Q. In what way and for what purpose was there such communication?

426 A. Getting books from each other.

Q. Has it not been the fact that for the last four or five years there has been constant and almost daily communication back and forth in buying each other's publications?

A. No; I think not, daily. It has been more or less all the time. Sometimes at intervals of quite a little while.

Q. But it is regular and frequent you mean, do you?

A. Well, there have been some interruptions; some few, I think, for a short time.

Q. How was it during the year 1877?

A. I could not state positively as to that. I think we were getting books from him, more or less, and he from us. I am quite sure we were.

Q. State whether at any time prior to the filing of the bill in this case Mr. Myers or any of his employees, or any one in his behalf, ever made any objection or remonstrance, in any way, to the firm of Callaghan & Co., against the publication of volumes 32 to 38. If so, in what way; and how and when was such objection made?

A. They did not, he or any of them, to my knowledge.

Q. In any way, directly or indirectly?

A. No, sir.

Q. State whether at any time prior to the filing of the bill in this case Mr. Myers or his employees or any of them, or any person for him, made any objection or statement to you concerning any alleged infringements of his copyrights by reason of your publishing 32 to 38. If so, what did they say, and when was it said and how?

A. They did not. Mr. Myers said to me himself that he did not care what we did with 32 to 38. What he cared about was

427 the volumes he had stock and plates of.

Q. State whether during the years 1876 and 1877 you had occasion to meet Mr. Myers. And, if so, to what extent, whether frequently or otherwise?

A. Oh, yes, sir; we met frequently.

Q. Have you not met him frequently during the last five or six years in the course of business, and otherwise?

A. Yes, sir.

Q. How far apart are your places of business?

A. About two blocks.

Q. What is the first knowledge or intimation that you ever received in any way, directly or indirectly, as to Mr. Myers' objecting to your republishing volumes 32 to 38 of the Illinois Reports?

A. When he instituted legal proceedings against us.

Q. You mean when he filed the bill in this case?

A. Yes, sir; the marshall's subpœna or summons, or whatever it was, was the first intimation I had of it.

Adjourned to 10 o'clock a. m., Saturday, January 25th, 1879.

428 SATURDAY, *the 25th day of January, A. D.* 1879.

Met pursuant to adjournment.

Present: Same as before.

Whereupon the defendant, BERNARD CALLAGHAN, was further examined by Mr. HIGH as follows:

Q. You have said in the earlier part of your examination that at the interview between Mr. Myers and Andrew P. Callaghan and yourself at your store in the latter part of June, 1877, "we tried to make some arrangement by which we could complete sets, either by purchasing his volumes 39 to 46, inclusive," etc. What do you mean by the word "we" in that connection?

A. I meant the word "we" to apply to Mr. Myers and ourselves. We could each of us put sets on the market, he by getting our volumes and we by getting his volumes.

Q. Did he participate in the conversation upon that point?

A. He did.

Q. What would have been the effect in the year 1877 upon Mr. Myers' volumes 39 to 46 which he had in stock of your republishing 32 to 38, inclusive, in the then condition of the market and trade?

A. It would have had a very decided beneficial effect on his volumes.

Q. In what way?

A. By creating a market for his eight volumes; by enabling us (meaning he and us both) to put sets on the market, which would embrace his eight volumes.

Q. What, if anything, was said at this interview between you upon that point in substance?

429 A. Well, there was the fact mentioned that it would enable him to make complete sets and it would enable us to make complete sets, and thereby sell them, which could not be sold unless by making complete sets.

Q. What, if anything, did you say to him in that interview about the impossibility of making complete sets without effecting this arrangement?

A. I said that as the matter stood now it was impossible to get sets to supply the demand, and consequently his eight volumes were not being sold as much as they would if complete sets could be made. He understood that as well as we did, of course, that it would make a market for his eight volumes.

Q. You have said that it was impossible to get volumes 32 to 38 or the volumes between 31 and 39 after the fire except at second hand. I will ask you what price, if you recollect, you were compelled to pay for these volumes during the years succeeding the fire?

A. We were compelled to pay almost all sorts of prices, from six and seven to ten and *or* twelve dollars a volume.

Q. In picking them up at second hand?

A. Picking them up at second hand; wherever we could get them; a volume here and a volume there; sometimes a number of volumes and sometimes one or two; just as we could get them, as lawyers were ready to sell, or we could get them at anything like a reasonable price.

Q. What was the fact as to whether it was easy or difficult during the years following the fire to get these volumes at second hand?

430 A. It was very difficult.

Q. State whether you had done anything in the way of general instructions to your traveling men upon that point; and, if so, what?

A. We did instruct them to pick up all these volumes that they could get hold of at anything like a reasonable price, meaning as low as they could get them up to ten or twelve dollars.

Question and answer objected to.

Q. What is the fact as to whether in the course of your business for the past four or five years you have given your traveling men anything in the way of general instructions as to sending any circulars that they might find in traveling issued by other publishers concerning their publications?

A. We have given them general instructions to send any of such circulars that would be *to* interest to us.

Q. What is the fact as to whether you had from time to time received from your traveling men, or from the profession circulars issued by other publishers concerning their publications?

A. We had; frequently from both.

Question and answer objected to.

Cross-examination by Mr. LE MOYNE:

Q. At the interview between you and Mr. Myers at your store, of which you have testified, was Mr. Andrew P. Callaghan present?

431 A. He w-s present most of the time; he sometimes went out.

Q. Did he participate in it?

A. Yes, sir.

Q. When you say you were trying to make an arrangement by which you and Mr. Myers could put complete sets upon the market do you mean that it was considered by you desirable to help him to make complete sets, or that you were looking after your interest solely in the matter?

A. I was looking after my own interest; at the same time it would be his interest; it would be to the benefit of him also.

Q. Was not the consideration with you to take care of your own interest in the matter? Was not that the object of getting him to your store?

A. Yes, sir; largely so. It would also be his interest.

Q. You had solicited this interview, had you not?

A. Yes, sir.

Q. You had asked him to come to your store in order that you might have an interview?

A. I think I did.

Q. And your object in asking him to come, as you have testified, was to enable you to buy from him volumes 39 to 46, was it not?

A. Yes, sir.

Q. And that was your only object, was it not?

A. Well, it was largely so; yes, sir.

Q. Had you any other object; and, if so, what was it?

A. Not except to make this arrangement to enable us to put complete sets upon the market. It would also enable him to do the same thing.

Q. In your direct examination you say, in regard to this interview, "The substance was we tried to make some arrange-
432 ment by which we could complete sets by purchasing his volumes 39 to 46, inclusive."

A. Yes, sir; or exchanging them.

Q. Now, state if there was any other object in the interview. You can look at the answer to the former question if you desire.

A. Well, my object was if we could not purchase them that we might make some arrangement for a system of exchange. It would hardly amount to a purchase, perhaps, because it would be an exchange based upon a cash basis that we would pay to him and he to us.

Q. The point to which I wish to direct your attention is that you have said that interview was procured by you for the purpose of making an arrangement in regard to volumes 39 to 46. Now, did you desire by that interview to make arrangements in regard to any other volume that he owned or claimed?

A. No, sir.

Q. Is it not true that during the business between you and Mr. Myers there have been a great many little squabbles and very active competition?

A. I am sorry to say it is.

Q. There has been a great deal of bickering back and forth, has there not?

A. There has been considerable.

Q. Did not Mr. Myers say to you prior to this interview of June

that he would never make any arrangement with the firm of Callaghan & Company again; that they had violated so many agreements that he would never make another with them, or anything to that effect? I do not mean to ask you whether it is not true that you had violated agreements, but whether he did not make use of that expression to you in regard to your mutual dealings?

A. I do not recollect that he did use those exact words.

433 Q. Well, anything to that effect?

A. We both charged each other with breaking arrangements made.

Q. Frequently, did you not, make these charges against each other?

A. Yes, sir.

Q. Do you not remember an interview that took place between you and him when you informed him that you had bought out the prior volumes—2 to 30?

A. I do not recollect it, yet it may have been.

Q. Do you not remember that you went to his store yourself and told him that you had bought out from Gilbert, of St. Louis, those volumes?

A. I do not recollect it as you state. I do have some recollection of such a conversation. I do not recollect when or where.

Q. Do you not remember in that conversation that he refused to make an agreement with you?

A. I do not.

Q. Do you remember his saying at that conversation or any other conversation that you can remember that he would not make *an* any agreement with Callaghan & Co. again, because they had so frequently violated agreements with him which they had agreed to?

A. I do not in connection with that.

Q. Well, in connection with their mutual dealings?

A. I think it is likely that such a statement was made.

Q. Is it not true that these bickerings and reproaches made by him to you and perhaps by you as against him were frequent since you have been in business here?

A. They were.

Q. And led to interruptions of trade between you, did they not?

A. They did.

Q. There were quarrels?

434 A. Well, *him* his violations of contracts made and arrangements led to bickerings and suspension of trade between us for awhile.

Q. And that has been going on ever since you have been in business here, has it not?

A. Well, not very frequently; there have been some instances of that kind. I would state these arrangements that we made were generally fixing on a scale of prices for the Chicago trade, and especially for the law school—for different books to the law school and the lawyers in Chicago—which we found Mr. Myers had violated, and then we broke our arrangements.

Q. Well, he alleged that you violated agreements, too, did he not?

A. He did make such allegations—yes, sir; I think Mr. Myers will recollect an instance where we proved and where he did not deny at the time that he had violated it.

Q. Do you not know that in the years 1876 and 1877 Mr. Myers' volumes from 32 to 46 were copyrighted?

A. No; I do not know it positively.

Q. You knew that he claimed the copyright, did you not?

A. Yes, sir; I understood he did.

Q. You knew it from himself that he claimed it, did you not?

A. I do not think I did.

Q. In your affidavit you have stated that he offered to sell you a copyright; you knew it in that way, did you not?

A. I think he said that he offered to sell us his alleged copyright or interest in this copyright.

Q. Then you knew from him that he claimed the copyright if he offered to sell it — you, did you not?

435 A. Yes, sir; at that time I did; I understood your question now to mean prior to that—that he always claimed it; I do not know that he always claimed it; I did know that he claimed it.

Q. My question was, When you were negotiating with him about the volumes, these negotiations commenced in 1876, did they not?

A. I do not think I took any part in these early negotiations; it was after he and A. P. Callaghan, my partner, failed to come to terms that I tried to negotiate with him.

Q. Do you not remember at the time that you informed him that you purchased the volumes from 2 to 30, and he then notified you that you had not acquired the copyright of some of these volumes?

A. I do not.

Q. Do not you remember that he said to you that Gilbert did not have the copyright of some of the volumes?

A. I do not.

Q. Do you say he did not say so to you?

A. I do not say so; I am not sure that he did not.

Q. You are not sure he did not tell you that Gilbert did not have the copyright; and do you not remember of asking him to try and find out what volumes — not copyrighted by Gilbert?

A. I do not know.

Q. You do not remember such a conversation?

A. No, sir.

Q. You do not say it did not occur?

A. I think it did not occur.

Q. You have no recollection of it?

A. No, sir.

Q. You have no recollection of being there then?

A. No; I have not.

Q. Now, in all these negotiations between you and your firm or Mr. Myers did you ever ask Mr. Myers for his consent to your publication of 32 to 38 or 32 to 46, or either of them?

436 A. I do not think I did. I have no recollection of asking him. I do recollect of asking him to reprint these volumes, and he said he would not.

Q. Well, did you suppose that because he did not reprint them you had a right?

A. Well, I did not think he would raise any objection to it. The reprinting of them was in his interest.

Q. You did not ask him whether he objected or not?

A. I do not think I did; no, sir. I think he would have been glad that we should have reprinted them, provided we had stopped at 39.

Q. I am not asking you to testify as to what you think he would have wanted or believed or felt; I am only asking what actually transpired between you.

A. I say that because it would have been his interest.

Q. Did you see a letter that was written by your firm to him on February 16, 1877, attached as an exhibit to Mr. Myers' affidavit in this case (showing witness a letter which the witness read)?

A. What is your question—if I have seen this letter?

Q. Did you see a letter that was written by your firm to him on February 16, 1877, attached as an exhibit to Mr. Myers' affidavit in this case?

A. Does that mean this letter (indicating)?

Q. Yes, sir.

A. I think I saw this letter; yes, sir.

Q. How soon after that letter was written did you make your contracts for reprinting the volumes which Mr. Myers claims?

A. I do not know. I had but very little to do with the making of these contracts. I think I was not in the State when the first contracts were made. I think I was in Wisconsin looking after other matters.

437 Q. Can you state whether there was any intercourse or any interviews? And, if so, I wish you would state when and where and what occurred between you and Mr. Meyers, between the writing of that letter and the making of the contracts to republish these reports.

A. I do not know.

Q. You cannot say there was one, can you?

A. One what?

Q. One interview or any intercourse between you and Mr. Meyers between the writing of that letter and the making of your contracts to republish the reports claimed by him or any of them?

A. I think there were some interviews between the writing of that letter and the completion of the publishing, and perhaps the contracts or some of them. I do not know.

Q. You cannot remember now that there was any, now, can you; you cannot specify?

A. I think that this interview in June was between that, possibly, and some other contracts on some of the latter volumes.

Q. After this letter was written can you remember any interview between you and Mr. Myers down to the June interview, which you

say may have been had between the time when you wrote the letter and made the contract?

A. No; I think I have none.

Q. You know of no negotiations between these two dates?

A. I think there was some, but I am not certain.

Q. You state that in the June interview, that in talking with Mr. Myers about your reprints, you asked him what reprints were referred to.

A. Yes, sir.

438 Q. And he said it meant all of our reprints. Was anything said about your reprints of 32 to 38 by him? And you answered yes, sir; that was to included the reprint of 32 to 38. Do you mean *of* to swear that Mr. Myers said *in* included from 32 to 38?

A. I mean now to say that it included the *to* reprints from 19 to 38; all of our reprints.

Q. My question is, when you said yes, sir; that was to include —, do you mean that Myers named the volumes that were to be included; if so, what did he say about it?

A. I mean that either he or I named volumes 19 to 38; all of these reprints—our reprints, and the negotiation was on that basis.

Q. You mean to swear, then, that you stated to him that your reprints included the volumes up to 38?

A. Either that I stated it or that he did; that it meant all our reprints, which did embrace those volumes.

Q. And you swear that either one or other of you gave the numbers of the volumes?

A. Yes, sir; that was the basis on which the negotiation was made.

Q. But you cannot swear whether it was you or he that gave the numbers?

A. No; I cannot be positive; I think it was he, however.

Q. That you are not positive of?

A. No, sir.

Q. State whether at any time since you have been in business here anything has been done on your part to get away from Mr. Myers the sale of your law reports.

439 A. Would you put that a little closer. What do you mean by that?

Q. Did you not try to make a negotiation with Mr. Freeman by which you should have the control of the Illinois Reports, and get them away from Mr. Myers?

A. I did.

Q. Did you not get Mr. Freeman up here, and did you not employ Judge Beckwith to assist you in carrying on the negotiation with Mr. Freeman, and did not you spend some money in trying to get the control of the Illinois Reports away from Mr. Myers?

A. I think we did not have Mr. Freeman up here. I think we did not employ Mr. Beckwith, except that Mr. Beckwith volunteered to act as a friend of Mr. Freeman's and did try to get us the publishing of the Illinois Reports. That is many years ago. I think

that was before the fire and not by the present firm of Callaghan & Company.

Q. Did you not make an offer to Mr. Freeman of a large sum of money to transfer to you the business of selling the Illinois Reports and publishing them?

A. I think I did not exactly. I had some talk with Freeman about it. He made us a promise that after a certain time he thought he would be able to give us the publishing. I saw several parties about it, among them Judge Lawrence, and stated to him about what we could do. It was not a large sum of money; it was merely what we would give him for each volume as we published.

Q. Mr. Callaghan, did you not have a bill introduced into the Legislature since the fire by which you would secure the publication of the reports?

440 A. I think not; I think that bill was not intended to give us the publication. My recollection is that it was intended to put the publication up to competition. I may be wrong in that. I do not recollect the exact provisions of the bill.

Q. Well, you had a bill printed, did you not, and sent it around to the lawyers in this State and others to influence legislation in that respect?

A. We had a circular printed and sent around, which resulted in a bill being drawn. I do not know whether we had it drawn or not. I will state that Mr. Myers was not then the publisher and it did not apply to the volumes that Mr. Myers owned; it was subsequent volumes. That was not to take the publication of the Illinois Reports away from Mr. Myers.

Q. Well, there was in fact, was there not now, a struggle between you and Myers as to who should have the control of the Illinois Reports?

A. Mr. Myers was not then having control of them.

Q. Answer my question whether there was not a struggle of this kind between you going on for many years back.

A. At an earlier day than that there was. It arose from the fact that Mr. Myers would not let us have those volumes as soon as he published them to supply our demand, and then we stated our grievance to Mr. Freeman, who promised, at the end of the contract he had with Mr. Myers, to give a fair show to other publishers, but after that contract expired Mr. Freeman commenced publishing them himself.

Q. Now, Mr. Callaghan, you state that you ascertained that

441 Mr. Bradwell was publishing either volume 37 or 38 for Mr. Myers. Can you state when you ascertained that?

A. I think not until our volume was out.

Q. Well, I will read you your answer to a question of Mr. High's in direct examination, "The fact is we had a quarrel with Mr. Bradwell over it."

A. Yes, sir.

Q. "And he asked us to let him up on our work."

A. Let up on him, I suppose, is what I meant—that is, to ease up on him.

Q. And then you say, "To our chagrin we found it was one of the volumes for Myers." Fix the date of that as near as you can.

A. I could not fix it at all. The fact is I have very little to do with the reprints of these Illinois Reports. It was gone into somewhat against my judgement, and I did not take much part in it.

Q. You cannot, then, fix the date when this let-up on Bradwell was consented to by your firm?

A. No, sir; I think we could get it, if necessary, from our books—that is, we could get near to it from about the time he was printing that volume for us.

Q. But you do know that your volumes were delayed whilst Myers' were being printed by Bradwell?

A. That is my understanding of it; yes, sir. A portion of ours he had commenced and gone a good ways along with it, and then asked liberty to be let up on it.

Q. Do you know whether he had commenced yours or not?

A. Oh, yes, sir.

Q. How do you know it?

A. We had been to him and had the proof and seen it.

Q. Before he commenced Myers'.

442 A. I do not know when he commenced Myers'.

Q. I understood you to say just now that he had commenced Myers' and then you let up on him. Now, you do not know whether he commenced on Myers' before he commenced on yours, do you?

A. I do not; but I think he had not from this fact, that he asked leave to be let up on our volumes, to do this work that he said he was in a hurry with, and we afterwards learned that it was the very same volume that he was printing for us.

Q. You have stated in substance that in the book trade among law publishers very little value is attached to a copyright in reports.

A. That is my understanding of it.

Q. I suppose you do not undertake to swear as to what persons owning a copyright may think about it; you only undertake to swear what they say?

A. Well, I know what is the custom in making sales and purchases. There is no very great stress laid on it.

Q. I am asking you now whether in testifying as to what other people's estimate—you are undertaking to say what they think about it or what they say about it?

A. I judge of what they think about it by the sales they make and the offers they make to sell.

Q. Not what they say about it?

A. Well, that is what they say about it.

Q. It is what they do, then, that you take your understanding from?

A. Certainly.

Q. Now, have you ever heard any one who had a copyright in these reports say the copyright was of little value?

A. I do not know that I have heard them say in these exact words.

443 Q. Do you know of any other instances than those you have named where copyrights have been sold in law reports?

A. I do not know positively; I think I know many cases where transfers have been made, but I do not know exactly on what terms.

Q. Did you not buy the copyright of the Iowa reports?

A. We did. Not this present firm of Callaghan & Company; Callaghan & Cutter, I think it was, bought these.

Q. You were one of the partners?

A. I was the senior member.

Q. You negotiated the trade?

A. I did.

Q. Who did you buy them of?

A. Mr. Thomas F. Withrow.

Q. What did you pay for them?

A. I do not recollect.

Q. Did you pay a very large sum for the copyright of these reports?

A. I think not.

Q. Well, can you swear whether you did or not? You have testified in regard to some other reports; now state what the fact was in regard to these reports.

A. The fact was we bought a certain number of volumes of printed books and a certain number of stereotype plates and the copyrights in a lump. I could not place the amount or value that was placed on any one of the things. I think the whole amount was largely on the stocks and plates.

Q. When did you make that purchase of Mr. Withrow?

A. I could not state.

Q. Before or after the fire?

A. Before the fire.

Q. Can you give the volumes?

444 A. The volumes were 13 to 21, inclusive—9 to 21, inclusive, I think.

Q. Did you have them on hand after the fire?

A. We had some of them. We had stock of all the volumes—13 to 20, inclusive, except 19.

Q. Have you had them ever since the fire?

A. Until recently; yes, sir. We purchased of him volumes 9 to 21, inclusive. We had stock since the fire of 13 to 20, inclusive. In other words, the stock of 9, 10, 11, and 12 and 19 to 21 were burned.

Q. In your direct examination you say that the great demand for a volume of reports is generally exhausted, or nearly so, in six months. Do you mean to testify that this would apply to the volumes of the Illinois Reports?

A. Well, I mean to say that there is not any very considerable demand for them; they only sell afterwards when the whole set is sold, except very seldom a man may have a case that he may have a reference to and b-y a single volume, which is a very rare thing, and the sale of sets is very limited.

Q. I ask you, then, whether you meant to include in this statement in your direct examination the Illinois Reports?

A. I did.

Q. What is your experience with the Wisconsin Reports; have you not reprinted some of the volumes?

A. We have.

Q. Have you not sold large numbers of them?

A. We have.

Q. Has it not been several years after the original volumes were issued that you so sold them?

A. It was.

Q. Have you not stated that you had sold 150 sets in a year of these Wisconsin Reports since you reprinted them?

445 A. I should think it is likely I have. I would state in connection with that that the sales were largely forced by a special effort of several traveling men, and frequently by exchanging them for other books, where we might find men having duplicates in their libraries. We gave them an unusually large sale by special efforts, much larger than the ordinary demand would have been for them.

Q. They were sold in full sets, you mean, do you?

A. Generally in full sets; nearly all in full sets.

Q. Would there not be a larger demand for Illinois Reports than Wisconsin Reports?

A. I think not, for two or three reasons. I can give them if you wish.

Q. Is it not true that after the fire there was a very large demand for Illinois Reports?

A. There was demand in Chicago for a great many sets of Illinois Reports.

Q. Do you not consider that that fact gave value to the copyright of the volumes that were out of print?

A. Not at all, because it was not utilized; the parties owning the copyright did not take advantage of the state of the market to print; neither did I consider that the demand was sufficiently large to warrant the reprinting.

Q. There was no such demand, then, as would warrant the reprinting, in your opinion?

A. I do not think there was; if there had been it would have been done.

Q. You think that was the reason why they were not reprinted by Mr. Myers?

A. Yes, sir.

Q. Because it was not profitable?

A. I think so; that was the reason he assigned.

446 Q. If there had been such a demand the copyright would then have been valuable, would it not?

A. It would have been valuable to this extent—it would have prevented anybody else from putting theirs on the market in competition with them.

Q. Well, its value would not prevent anybody else; it would be a matter of right?

A. No; it would be the fact that he owned it.

Q. The owner of the copyright would have a desirable property if there was a demand. Does not the demand regulate the value of the copyright?

A. It would.

Q. Is not that the sole test of the value of the copyright—as to whether there is a demand for the book when published?

A. Well, it is largely so; yes, sir; not entirely, because the opinions can be printed by anybody; they are public property.

Redirect examination by Mr. HIGH:

Q. You have stated in your cross-examination that there has been some quarrelling and bickering between your firm and Mr. Myers at different times. State whether there has ever been any quarrelling or bickering between you prior to the filing of the bill in this cause concerning your republication of volumes 32 to 38, inclusive.

A. There was not.

Q. State whether in this interview in June, in your store, to which you have testified, Mr. Myers said anything concerning any value which he attached to the copyrights of volumes 32 to 38; if
447 so, what did he say upon that point?

A. He did not attach any value to it; he said he did not care what we did with these volumes; that he only cared about the volumes he had stereotype plates in stock of—39 to 46, inclusive.

Q. What is the fact as to which member of your firm made the various contracts for re-editing and reprinting volumes 32 to 38, inclusive?

A. It was Mr. A. P. Callaghan who did it.

Q. Did you make any of these contracts?

A. I did not; the fact is I was opposed to the project, for the reason that I did not think it would pay; I do not think now it has paid.

Q. You have no exact recollection of the time when the contracts were made?

A. No, sir; I have not.

Q. You have been asked about the republication of certain Wisconsin Reports by your firm. Is it not the fact that these were published under contract with the State, whereby you derived large aid from the State in their publication?

A. They were; we would not have published them without the State aid.

Q. How many copies of each of the volumes of your publication of the Wisconsin Reports did the State take?

A. They took 425 copies of each volume.

Q. At what price?

A. At $4.50 a copy each as soon as the books were delivered.

Recross-examination by Mr. LE MOYNE:

Q. In your statement as to the number of volumes you have sold—150 sets a year—the amount taken by the State was not included, was it?

A. No, sir; it was not.

448 Q. In the interview between you and Mr. Myers in June you say that he stated he did not attach any value to the copyright of 32 to 38. Was the copyright of 32 to 38 then discussed between you, and what was said on the subject?

A. Your question is not a fact as to my former answer. You put in my mouth a word that I did not state.

Q. State what the word is.

A. You say that I stated that Mr. Myers stated he did not attach any value. What I said was he did not attach any value to it.

Q. You do not mean to say that he said so on that occasion?

A. I do not recollect whether he said so or not, but he said he did not care what we did with 32 to 38, inclusive, and it made that impression on me. I do not know whether it was stated or not.

Q. You cannot swear, then, whether a word was said in regard to the copyright of 32 to 38 at that interview, can you?

A. No; I cannot.

Q. You did not ask him whether he attached any value to the copyright of 32 to 38, did you?

A. I do not think I did.

Q. There was no reason why you should volunteer his estimate, was there? He was trying to sell you the copyright at that time, was he not, of these very volumes, or you were trying to buy from him the copyright in these very volumes?

A. We were trying to buy his actual stock. What we were trying to buy most was his volumes—39 to 46, inclusive.

Q. I am not asking you what you were most anxious to buy, but what you were then negotiating for.

449 A. Volume- 39 to 46, inclusive.

Q. Were you not then offering to buy the copyrights of 32 to 46?

A. Not particularly—no, sir. We would have liked to throw them all in.

Q. In your negotiations were not these volumes specified—that you were to have the copyright of 32 to 46? Is that not what you have sworn to in your affidavit filed in this cause?

A. I think so—that is, we were to buy all his stereotype plates and stocks and his alleged copyright in these volumes.

Q. Including the copyrights of 32 to 38?

A. Yes, sir. Well, it was including the copyright of 32 to 46.

Q. When you say that Mr. Myers at that interview did not attach any value to the copyright of 38 you do not undertake to say that he said so, but that you inferred it; is that the truth or not?

A. I do not say that he said so; I cannot say; but when he said he did not care what we did with 32 to 38, inclusive, but the others

were what he cared about, of course, there was nothing else left for me to infer.

Mr. HIGH:

Q. When was this effort made on your part to get the publication of the Illinois Reports from Mr. Freeman concerning which you were asked in the cross-examination?

A. I think we made several attempts prior to the existence of our present firm and prior to the fire and after it for a number of years.

Q. Have you done anything of that kind during the years 1876 and 1877 except the contract that was finally made by A. P. Callaghan in the spring of 1877?

A. None at all, nor for many years before.

Q. Who was the publisher of the Illinois Reports after volume 46?

A. Norman L. Freeman.

450 Q. Mr. Myers' interest as publisher terminated with 46, did it not, to the best of your knowledge?

A. I think Mr. Myers' interest terminated with 46.

In the Circuit Court of the United States for the Northern District of Illinois. In Chancery.

EUGENE B. MYERS, Complainant,

vs.

BERNARD CALLAGHAN *et al.*, Defendants.

Testimony taken before Henry W. Bishop, master in chancery of said court, Friday, the 17th day of January, A. D. 1879.

Present: J. V. Le Moyne, Esq., solicitor for the complainant, and James L. High, Esq., solicitor for the defendants.

ANDREW CALLAGHAN, a witness called on behalf of the defendants, being first duly sworn, was examined in chief by Mr. HIGH, and deposes and says as follows:

Q. What is your name, age, and occupation?

A. Andrew Callaghan; age, 47 years; my business is law-book seller and publisher.

Q. Are you one of the firm of Callaghan & Company, defendants in this case; if so, how long have you been a member of that firm?

451 A. I am a member of the firm, and have been so a little more than four years; in the neighborhood of five years.

Q. You came into that firm, I believe, some time after it was first formed?

A. Yes, sir.

Q. I will ask you whether at any time during the year 1877 you had any conversation or interview with the complainant, Mr. Myers, concerning your republication of volumes 32 to 38 of the Illinois Reports; and, if so, when and where?

A. I had a conversation with Mr. Myers at a restaurant on Dearborn street. I think the number is 124. I am not quite certain. We sat at the same table and ate our lunch together.

Q. What was said in that interview by both of you?

A. During our lunch we had a conversation, among other things, regarding the republication of the Illinois Reports.

Q. What, if anything, did Mr. Myers say to you in that conversation about your republication of the Illinois Reports?

A. My recollection of the conversation now, or that portion of the conversation, was that Mr. Myers asked me the condition of our reprints, as to how far we had progressed, and when we expected certain volumes out.

Q. About what month in 1877 was this?

A. I am very positive it was either in June or July, but I could not fix the exact month, because I did not suppose the matter would ever come up again.

Q. What reply, if any, did you make to his enquiry?

A. I told him the exact state of the case—that is, I could
452 not fix now the number of volumes that we had in press, as it was not fixed in my mind, and I did not suppose it would ever come up again; but whatever the state of the case was at that time, I told Mr. Myers just how far they were advanced, and when we expected them out.

Q. What else was said by either of you about that matter?

A. I cannot particularize. It was in relation to that subject, and the information which I wished to convey to him, and which I did convey, was the exact state of the case and their condition at that time.

Q. Whatever the condition then was you told him fully, you mean?

A. Yes, sir. My object was that he should know.

Answer objected to.

Q. Well, you mean you told him exactly the condition they were in?

A. Yes, sir.

Q. What was the fact as to whether any of these volumes were then in press, or being printed, or in the hands of the printer?

A. Yes, sir; there were a number.

Q. And you so stated to him?

A. I so stated, and when we expected them out.

Q. State whether in that conversation he made any statement to you in the way of objecting to your reprinting volume 32 or 38. If so, what did he say in that regard?

Objected to.

A. He made no objection whatever, sir. I had no intimation of it at all from Mr. Myers.

Q. What was the nature of the interview generally, as to whether it was friendly or unfriendly?

453 Objected to.

A. It was very cordial, sir, as far as I know. I invited Mr. Myers to take a cigar with me after lunch, which he was good enough to do, and he walked up to the corner of Madison street, and we stood there a little while talking. It was very friendly.

Q. What was the fact as to whether there was any communication between the two houses of Callaghan & Co. and of E. B. Myers, in the course of their business or otherwise, during 1877?

A. There was frequent communication, sir.

Q. How did that come about?

A. In the way of their sending up to our place for books and our sending to them for their books.

Q. State whether at any time during the year 1877, when Mr. Myers or any of his employees had occasion to be in your store in connection with their business, anything was said by any of them to the firm of Callaghan & Co. or any of their employees concerning these reprints of volumes 32 to 38.

A. The subject was frequently alluded to by Mr. Myers' employees and as freely discussed on our part, and the exact state of the case explained.

Q. State whether, when they had occasion to come to your store in the way you have testified, during the year 1877, they asked any questions concerning these volumes; if so, what questions, and who.

A. Yes, sir. My recollection of it now is that they asked on several occasions as to when we expected certain volumes.

Q. What reply, if any, was made by you or your employees to them upon that point when such questions were asked?

454 A. The reply was a correct answer, as near as we could, as to when we expected them.

Q. Were such conversations ever held with you personally?

A. Yes, sir.

Q. Were they ever held with any of your employees in your presence?

A. Yes, sir.

Q. Look at the circular which I now show you, and which is annexed as an exhibit to the deposition of Mr. Myers in this case, and state when you first saw that printed circular with reference to the beginning of this suit.

A. The first time that I ever saw that, to my knowledge, or heard of it, was when it was produced in Mr. Bishop's office.

Q. When it was first produced before Mr. Bishop on the hearing of the motion for the injunction?

A. Yes, sir; the first time I ever saw it was on that occasion, but the first time I ever heard of it was when they said during that trial that they had a circular; that was the first I ever heard of it.

Q. When Mr. Myers' affidavit was produced?

A. Yes, sir.

Q. In which he refers to it?

A. Yes, sir.

Q. The affidavit used on the hearing?

A. Yes, sir; and the first time I ever saw it was when it was produced before Mr. Bishop on the hearing. I think it was in our own store, after the case had closed, you (Mr. High) got a copy of the circular and brought it over to our store.

Q. After the hearing before Mr. Bishop on the motion for the injunction?

A. Yes, sir.

Q. Mr. Myers has testified in his direct examination in this case that about the time when this circular was issued, in Febru-
455 ary or March, 1877, he sent a similar circular, making an announcement of his intention to republish volumes 32 to 38, to the legal profession throughout the State of Illinois. Did you ever see any such circular?

A. I never saw or heard of such a circular before Mr. Myers' affidavit.

Q. What is the fact as to whether in your business you are or are not brought in contact with members of the legal profession from different parts of the State, to any extent?

A. I am frequently brought into contact with them.

Q. Did you ever, before the beginning of this suit, derive any information from such persons concerning either of such circulars; if so, from whom and how?

A. I never have, sir.

Q. Did you ever derive any information concerning either of such circulars from traveling salesmen or other persons employed by the firm of Callaghan & Co.?

A. No, sir; never.

Q. State whether at any time prior to the commencement of this suit Mr. Myers or any of his employees or any person in his behalf ever said anything to you in the way of objecting to your reprinting volumes 32 to 38 of the Illinois Reports. If so, what did he say and who said it?

A. There never was any objection made, to my knowledge.

Q. State whether at any time prior to the filing of the bill in this case Mr. Myers or any of his employees or any person in his behalf ever made any statement to you concerning an alleged infringement of his copyright, if any, in these volumes 32 to 38 by your republication.

A. Never, sir.

456 Q. When and how did you first learn that Mr. Myers objected in any way to your republishing volumes 32 to 38 of the Illinois Reports?

A. When he instituted legal proceedings.

Q. In this suit?

A. Yes, sir.

Cross-examination by Mr. LE MOYNE:

Q. Do you mean that Mr. Myers was frequently in your store during 1877?

A. No, sir; I did not say so.

Q. You said Mr. Myers and his employees were frequently in there?

A. No, sir; I did not understand the question to be put in that way—that Mr. Myers was included at all, except with regard to the meeting at the restaurant.

Q. Did you ever see Mr. Myers in your store in 1877?

A. I have.

Q. How often?

A. Three or four times, I think.

Q. During 1877?

A. No; I did not say it was during 1877.

Q. My question was as to 1877.

A. I saw him there during 1877.

Q. How often?

A. I could not swear as to how often.

Q. Can you swear you ever saw him there twice?

A. I would not swear positively, but my impression is that he was there twice during 1877.

Q. But you would not swear he was?

A. Not twice; no, sir; I will not swear positively that he was there twice during that time.

Q. Who were the employees that you say came from Mr. Myers to your store? Name them.

A. George Myers and Mr. Beckwith.

Q. That is all of them, is it?

457 A. Well, those are the only two; he had another man who used to visit our store, but I do not think we had any conversation with him; that is the porter; and those are the only two men that we had any conversation with relative to this matter.

Q. The man you refer to was the porter—John, the German?

A. Yes, sir.

Q. You did not have any conversation with him about it?

A. Not to my recollection.

Q. The conversations, then, that you have been testifying to were altogether between Mr. Beckwith and George Myers?

A. Yes, sir.

Q. You say Mr. Myers never objected to your republication?

A. Not to my knowledge.

Q. Did you ever ask him whether he objected to it or not?

A. No, sir; I never did.

Q. Did you ever ask him to consent?

A. No, sir.

Q. Did you ever have any conversation with him on the subject, except at the interview you speak of in the restaurant?

A. I never had; no, sir.

Q. Were you ever present at any time when anybody else had; if so, when and where?

A. I was in the store when a conversation was had, but I was not present during the conversation; I did not hear the conversation; I did not hear all of it; I might have heard some portions of it.

Q. Do you remember, at the conversation that you speak of with Mr. Myers, in coming away from the restaurant, of his asking you how these reprints were being made?

A. No, sir.

Q. Do you not remember of his saying to you that you would have to be careful of it if you undertook to print any of his books?

458 A. I do not recollect anything of the kind.

Q. Don't you remember of his saying to you, "You will have to be careful or I will prosecute you if you violate my copyright?"

A. I am quite positive he never made use of such language to me.

Q. Don't you remember of telling Mr. Myers in having the reprints made you were having a new syllabus and a new index made?

A. I do not recollect that I did say so, but it is possible I may have said so.

Q. Do you remember of telling him why that was done?

A. No, sir; I do not.

Q. You do not remember whether you did or not?

A. No, I would not swear as to whether I did or not.

Q. Now, do you not know that at the time of that conversation none of the reprints of the books of which Mr. Myers had the copyright were out by you?

A. No, sir; I do not know so; I think some of them were out.

Q. What ones were out?

A. I do not recollect. I have not looked the matter up since, but I think we had one out in May, and the conversation with Mr. Myers was subsequent to that time.

Q. How long subsequent to that?

A. It was either in June or July.

Q. You cannot fix the date any closer than that?

A. No, sir.

Q. When were your publications issued?

A. I have not looked the matter up, but my impression is now that we had one or more of them out in May.

Q. Can you state what ones were out in May?

459 A. No, sir; I could not now. I can prove that if it is necessary.

Q. But I am asking you about your recollection solely.

A. No, sir; I could not tell. I have not looked the matter up.

Q. You have no recollection of when they came out, then?

A. I have not any recollection as to the dates when they appeared. *A.* No, sir.

Q. Can you swear that any of them were out, of 32 or upwards, prior to the middle of June?

A. No, sir; I do not wish to swear to that, but my impression is that we had some of those volumes out before that time.

Q. But you are willing, as I understand you, to swear that this conversation between you and Mr. Myers was after you had some of his volumes out?

A. No, sir; I do not say so.

Q. What is your recollection of it? Now, give us your best recollection.

A. My recollection is that some of the volumes were out, but I would not swear as to whether they were or not. The conversation we had was subsequent to the beginning of the work and while they were in press, some of them.

Q. Do you remember whether you had volume 30 out at that time?

A. I do not remember.

Q. Can you swear that you had volume 30 out at that time?

A. I have stated that I do not remember.

Q. Had you 19 out at that time? Do you remember that?

A. No, sir; I do not remember that.

Q. Do you remember whether you had any of the reprints out between 19 and 30?

460 A. My impression is that we had, but I would not swear. I have not looked into the matter at all since that time.

Q. Were not Mr. Myers' inquiries to you at that time made in regard to volumes from 19 to 30?

A. No, sir; they had no reference, as far as I can recollect now, to those volumes between 19 and 30.

Q. Were any volumes named that he enquired about; if so, what?

A. The volumes in dispute are the volumes we were speaking of. As far as I can recollect now they were volumes between 32 and 38.

Q. That is to say, the conversation between you and Mr. Myers at that time referred entirely to volumes 32 to 38.

A. That is my recollection of it.

Q. And those volumes were then named?

A. Those volumes were included in that way—"our reprints."

Q. Were the numbers mentioned between you and him?

A. I am certain I stated to Mr. Myers the volumes that we had in press at that time—the numbers of those volumes.

Q. Do you mean to say that you are positive that you stated to him the number of the volumes that you had in press, and that it included from 32 to 38, or some of them?

A. The volumes in dispute, the volumes that we were speaking of, were those volumes. The volumes that we were talking of or that the conversation was had about were the volumes betweeen 32 and 38.

Q. When you say the volumes in dispute do you mean
461 the volumes in dispute then? Were you disputing about them then?

A. No, sir; the conversation that Mr. Myers and I had related to the volumes between 32 and 38 and that was the enquiry he made, and my replies had reference to those volumes.

Q. Now, how can you remember that the volumes were named from 32 to 38?

A. The only way that I can remember that is that those were the volumes that Mr. Myers appeared to be interested in.

Q. Did he name those volumes and express any interest at that time in those particular volumes; if so, what did he say about them?

A. I told Mr. High, in my direct examination, that I could not state exactly the words that passed between us or the conversation had; but it had relation to those volumes, and I stated the exact condition of those volumes.

Q. Now, do you mean to swear that Mr. Myers asked you about the volumes from 32 to 38, and that he named the volumes, or did he describe the volumes that he asked you about as "your reprints;" now, which did he say?

A. I don't recollect that he named any particular volume.

Q. Did he ask about your reprints?

A. He asked me about the condition, yes, sir, of our reprints.

Q. Well, did you name the volumes from 32 to 38?

A. I named the volumes which we had in press.

Mr. HIGH: From 32 to 38?

A. Yes, sir.

Mr. LE MOYNE: I object to the counsel suggesting to the witness his answer.

462 Q. Did he ask you about anything else but the volumes 32 and 38?

A. Well, I think likely he asked me about a great many things that had no reference to them whatever.

Q. Did he ask you about any other reprints except 32 and 38?

A. I do not recollect of his asking anything else.

Q. You have no recollection of his asking about any of the reprints except 32 and 38?

A. No.

Q. And you cannot say whether he said 32 to 38, or whether he just asked you about your reprints?

A. No, sir; he enquired about those volumes between 32 and 38.

Q. Only?

A. Only.

Q. You have no recollection that you told him how they were being prepared?

A. I recollect that I told him whatever the state of the case was; I told him just exactly what it was.

Q. Did you tell him how they were being prepared, or in what manner they were being prepared or reprinted?

A. I do not recollect at the time that anything of that kind was said by either of us.

Q. Were you not, during the month of January, 1877, frequently in the Legal News printing office—in the printing-room of the Legal News Company?

A. Yes, sir.

Q. Don't you know that Mr. Myers' volume 37 was being printed there at that time or stereotyped?

A. I discovered, when I went to look after one of those volumes of our own, that they were engaged on a similar volume for Mr. Myers.

Q. When did you make that discovery?

463 A. It was in the summer of 1877, either June or *or* July; I think it was July.

Q. Did you not make this discovery before they commenced on your volume of the same number?

A. No, sir.

Q. They had commenced yours?

A. They had commenced ours and I was looking after it; that is what I was there for.

Q. Now, how far advanced was Mr. Myers' volume at the time you made this discovery?

A. I could not tell you, sir. Bradwell would not give me that information.

Q. Was it stereotyped?

A. I do not know.

Q. You do not know whether it was printed or not?

A. I do not. I know it was not finished; it was not completed. My recollection is it was not completed until after ours was.

Q. How far was your volume advanced at the time you made this discovery?

A. I could not tell you that, sir.

Q. Do you remember when your volume 37 was finished?

A. No, sir; I do not. I remember that fact, though, because I made the enquiry at the time whether—I was hurrying them all I could to get ours out before—to keep them at work on ours.

Q. What fact is it that you say you remember?

A. I remember the fact that ours was out before theirs, as far as I can recollect. I want to amend an answer which I made to Mr. Le Moyne.

Mr. HIGH: If you wish to make any amendment to your answer you can do so.

A. He (Mr. Le Moyne) asked me how I recollected this con-

464 versation with Mr. Myers and the volumes we spoke about. As soon as I got back to our store I related our conversation to Mr. A. P. Callaghan, and he approved of my explanation to Mr. Myers; and I recollect that fact.

Q. And that is what makes your recollection so clear as to volumes 32 and 38 being discussed?

A. Yes, sir.

Mr. LE MOYNE: You say you related to Mr. A. P. Callaghan the explanation that you had given to Mr. Myers. State what you mean by the explanation.

A. I did not say that, Mr. Le Moyne.

The witness' answer in regard to the explanation was read to him.

Q. Now, then, state what you mean by the explanation.

A. The explanation was the answers I made Mr. Myers to his questions in relation to those volumes.

Q. That is all you mean by explanation?

A. That is all I mean by explanation. I explained to him the condition of the books at the time.

Redirect examination by Mr. HIGH:

Q. You have stated in answer to a question asked on cross-examination by counsel for complainant that you learned at the Legal News office some time during the summer of 1877 that they were reprinting volume 37 or 38 for Mr. Myers?

A. Yes, sir.

Q. How did you learn that?

465 A. I learned it by going over there looking after the volume that we had in press, but I do not recollect now how it came to my knowledge; whether it was Judge Bradwell or one of his men told — they were printing a similar volume for Mr. Myers.

Q. Was that the first knowledge or information you had received about the reprinting of that volume for Myers?

A. That was the first knowledge or information I had of it.

Q. Prior to that time what knowledge or information, if any, did you have as to any intention on the part of Mr. Myers to reprint any of the volumes from 32 to 38?

A. I never had the slightest intimation that he intended to—anything of the kind.

Recross-examination by Mr. LE MOYNE:

Q. Were you not, during the summer of 1877 and prior to this time that you speak of, frequently in and out of the Legal News office?

A. Yes, sir.

Q. Were you not having work done there all that spring and summer?

A. I think we were; yes, sir.

Q. Were you in there daily to see about it?

A. I was in there very frequently.

466 And thereupon defendants read in evidence the depositions of Marshall D. Ewell, Van Buren Denslow, D. Harry Hammer, Frank Shepard, Jeremiah Leaming, George W. Beck, Eugene B. Myers, and Sheldon A. Clark, as follows:

467 In the Circuit Court of the United States for the Northern District of Illinois. In Chancery.

EUGENE B. MYERS, Complainant,

vs.

BERNARD CALLAGHAN *et al.*, Defendants.

Testimony taken before Henry W. Bishop, master in chancery of said court, Monday the 8th day of January, A. D. 1879.

Present: J. V. Le Moyne, Esq., solicitor for complainant, and James L. High, Esq., solicitor for defendants.

MARSHALL D. EWELL, a witness called on behalf of the defendants, being first duly sworn, was examined in chief by Mr. HIGH, and deposes and says as follows:

Q. What is your name, age, residence, and occupation?

A. My name is Marshall D. Ewell; age, 34; residence, South Evanston; occupation, lawyer.

468 Q. Are you a member of the bar of this State?

A. Yes, sir.

Q. How long have you been connected with the profession?

A. I don't remember just the date when I was admitted in the State; but I was admitted by the supreme court of Michigan the 22d of April, 1868; I think in this State about two years ago, I think.

Q. Have you been engaged in professional duties in connection with the profession of law since that time?

A. Yes, sir; I have ever since.

Q. What connection, if any, did you have with the republication of the volumes of Illinois Reports by the defendants, Callaghan & Co., from 32 to 36, inclusive?

A. I edited them, or prepared them, and read the proof; I did all the work usually done by authors in that connection.

Q. State, if you please, your plan and method of operation with reference to the editorial work in connection with the volumes named.

A. In the preparation of the syllabi my plan was first to read the opinions—and I read most of them through twice—in order to get the point decided by the court. I made up my mind as

469 to what the case decided, and invariably wrote the head-notes in my own language, except where the court had formulated the point decided, in which case, if I thought it stated in suitable form, I adopted the language of the court. I did not in any instance copy head-notes from the edition of Mr. Freeman, but arrived at my conclusions from the reading of the cases.

Q. State whether you made any use whatever, and, if so, what and to what extent, of the head-notes of Mr. Freeman?

A. I did not use them.

Q. In any shape or manner?

A. No shape whatever; of course, in the case before me I saw them, but I did not derive any assistance from them. I did not copy or use his conclusions. I arrived at my conclusions independently. In the preparation of the statements I endeavored to use my own language. I got my information from the printed edition, but in making the statements I used my own language and did not copy the language used by the reporter, unless in those cases where the reporter had quoted from documents in the record; in those
470 cases I used those documents or those copies. In some cases I got my information entirely from prior reports of the same case reported in volumes prior to the 31st Illinois.

Q. You mean your information as to the facts?

A. As to the statement of the facts in those cases I did not use any information from the edition of Mr. Myers.

Q. In making up the statement of the cases in the volumes which you edited did you derive any information, and, if so, to what extent, from the opinions of the court?

A. Yes, sir; I always read through the opinions of the court and compared it with the statement of the reporter to see if they harmonized, and in quite a number of instances I found that they disagreed. In those instances I took the statement of the court in preference. Whenever the statement of the court was sufficient, in my judgment, to give a clear understanding of the case without any preliminary statement I made none, but let the court state the facts in the opinion without any preliminary statement. The opin-
471 ions of the court are the same in the two volumes, except that in quite a good many instances I discovered errors of citation, which I corrected, and also some verbal inaccuracies. Aside from that they are, of course, identical.

Q. With reference to the indexes of the several volumes of the Callaghan edition re-edited by you, state your method and plan of constructing the indexes.

A. My method of constructing the index was this: I took proof of the syllabi prepared by me, took shears and cut them up and classified them, and made the index wholly from them without even looking at Mr. Myers' edition; made it up entirely independent of the former edition.

Q. State whether any additional work was put upon those several volumes by you which does not appear in the original volumes of the Freeman edition, by way of head-notes, foot-notes, or otherwise.

A. Yes, sir; there does in a large number of instances. I found what appeared to me to be cases where Mr. Freeman had failed to state all that the case decided, and accordingly it would be
472 found that my head-notes contain much more in many instances than Mr. Freeman's—points which were not stated at all by him. I also, in nearly every case, prepared a note to prior adjudications of the supreme court of this State and gave such references as occurred to me, though not very many, to reports of other States. I put that new matter in the form of notes to the cases.

Q. From what sources did you derive the information from which such new matter was prepared?

A. I derived that from the digests and reports.

Q. And from your own independent investigation?

A. From my own independent investigation. I copied nothing.

Q. State whether any labor was put upon those volumes edited by you in the way of abbreviated or condensed statements of the head-notes preceding the different cases and the head-notes of those cases?

A. Yes, sir.

Q. State what you did in that connection?

A. I put such abbreviated statements in in every instance.

Q. In what shape were those prepared by you?

A. They were prepared by reading the head-notes as pre-
473 pared by me, and consisted usually of one or more words in "small caps" and a line in italics, I think, stating very briefly the point ruled in that particular point of the syllabus. These short head-notes, in very many instances, differed quite materially from those of Mr. Freeman's, although in the majority of cases, from the very nature of the case, they must bear a resemblance.

Q. I will ask you whether, since the commencement of this suit, you have made any comparison of head-notes in the different volumes of Freeman, from 32 to 36, inclusive, with the head-notes in the corresponding volumes as re-edited by you, for the purpose of ascertaining any point of apparent resemblance or divergence?

A. I have; I have instituted a careful comparison of the different volumes of the two series with special reference to the syllabi referred to in the affidavits of Messrs. Hill, Barber, and others on file in this case and used on the motion for the preliminary injunction. The cases referred to by those affiants where the head-notes as prepared by me and those prepared by the official reporter bear
474 an apparent resemblance I think I can swear positively are, in every instance, without exception, cases where I have taken the language of the court or modified the language of the opinion of the court in preparing the head-notes. In some instances, of course, I found it necessary to change some parts of the frame of the sentence, but the general skeleton of the sentence will be found to correspond with the language used by the court, and an examination or comparison of the the two will show internal evidences of the fact that my notes were taken from the opinion and were not copied—such points of resemblance as the use of the article, of the use of the singular or plural number of nouns and verbs, and such other resemblances, many more of which would occur to me if I had the reports before me; I cannot remember them all; I think I have referred to them all in my affidavit by underlining the points of resemblance with ink.

Q. Have you reduced the results of that examination to writing, in tabular form or otherwise?

A. I have; I reduced the results of that examination to writing and print, I might say, in my affidavit on file in this cause.

475 Counsel for defendants offers in evidence as an exhibit to the deposition of this witness the tabular statement referred

to, being the same which is embodied in the affidavit of the witness filed in this cause on the 12th day of January, 1878, beginning with the fourth page of said affidavit, headed "32nd Illinois Reports," and comprising nine consecutive pages, each of which is verified by the witness, and ending at the point on the tenth page marked with the initial of the witness, and it is hereto annexed marked "Schedule A."

Q. Explain, if you please, with reference to this exhibit just made a part of your deposition, the nature and arrangement of the same with reference—I mean especially to the parallel columns.

A. The first left-hand column is quoted from the edition of E. B. Myers & Chandler or E. B. Myers & Co. The second column is cut out from the proofs of the opinion of the court of Callaghan & Co.'s edition. The third column is cut out of Callaghan & Co.'s edition, and both the second and third are pasted upon the face of the
476 paper in the affidavit. That is the way it is prepared. The second column gives the marginal page of the original edition and the third column at the top gives the page upon which the particular portion of the syllabus is found.

Q. In instituting this comparison what reason, if any, did you have for selecting the particular cases which are included in this schedule or exhibit just referred to?

A. I had no reason other than to explain the apparent similarity shown in the affidavits of Mr. Hill, Mr. Barber, and others. I believe that the same result would be arrived at in taking cases at random wherever the court formulated the point in their opinion.

Q. Does this schedule or exhibit just referred to include cases from each of the volumes re-edited by you?

A. It includes all the cases, I believe, referred to in the affidavits of Barber, Hill, and others; it may possibly include others.

Q. In addition to those referred to in their affidavits?

A. Yes, sir; it might include others. I am not certain as
477 to that without looking at them. I could not tell without examining the reports as to that. I think it contains others besides the ones that they referred to, but I am not certain as to that. I could not tell without instituting a lengthy comparison to ascertain whether it does or not, but I think that it contains others.

Q. State whether you have made any comparison of the volumes as re-edited by you with those of the Freeman edition as regards the number of pages in the different volumes, respectively.

A. I have.

Q. What is the result of that investigation?

A. I have prepared a table showing the number of pages in each of the volumes 32, 33, 34, 35, and 36 Illinois, as published both by E. B. Myers & Chandler and E. B. Myers & Co. and Callaghan & Co.'s edition, showing the number of pages in each volume of each edition, respectively, and the difference in pages between the respective volumes. I have that here in a tabular form. I think that this schedule will be found correct.

Counsel for defendant offers in evidence the statement referred to, and the same is hereto annexed and marked Schedule "B."

Q. In what manner was it made?

478 A. It was made by taking the initial page of the volume and substracting the number of it from the last page next to the index, which, of course, gave the net number of pages in each instance.

Q. And it was made on your own personal examination?

A. Yes, sir; I may have made mistake in my computation, but, if not, it is correct. I think it is correct.

Q. What reason, if any, can you give for the difference in the number of pages in the volumes of the editions as testified to?

A. The difference arises from the fact that the arguments of counsel are entirely omitted, I believe, from the edition of Callaghan & Co., and from the further fact that the statements of the facts in the cases are in many instances omitted entirely and in others very greatly abbreviated, in the edition of Callaghan & Co.; that may perhaps be very slightly compensated by the space occupied by the notes, but that would not make very much difference.

Q. State whether you have instituted any comparison of

479 the Myers edition with the Callaghan edition for the purpose of determining the number of cases in the latter edition in which the statements of the facts of the cases are omitted as compared with the Myers edition?

A. I have.

Q. What is the result of that examination?

A. I have made a tabular statement of the number of cases in each volume in which there are statements of facts. The total number of cases in the Myers edition in which there were statements of facts, according to my count, amounts to 321 cases.

Q. In volumes 32 to 36, inclusive?

A. Yes, sir; in the Callaghan & Co. edition of the same volumes, 203, the difference being 118 cases, I believe. I would state, however, that in making this there might be some difference of opinion as to what would be a statement. I have counted only those as statements, according to the best of my recollection, in either edition in which the reporter did actually state some of the facts of the case, something besides the circuit and the court from which the case

480 came up. I did not call that — statement. A person going over it might differ with me in judgment and might make a little different count, but I think that this will be found substantially correct.

Counsel for defendants offers in evidence the statement in question, and the same is annexed to the deposition of the witness, marked "Schedule C."

Q. In those cases in the Callaghan edition of the volumes edited by you where this examination just referred to shows the statement of facts of the cases to have been omitted what sources, if any, is the information to be derived as to what the facts of the cases actually were by a person using the volumes?

A. From the opinions of the court in those cases I though- that the court stated all the facts that were necessary to the full understanding of the case.

Q. And that was the reason for your omission of any formal statements of facts?

A. Yes, sir.

Q. In detailing your general plan and method of operations in the editing of the different volumes edited by you do you
481 mean to be understood that that plan and method of work was applied to each of the cases in each of the volumes so re-edited by you?

A. I do.

Q. I will ask you again whether, in any instances or in any way, either directly or indirectly, you prepared the head-notes or statements preceding the cases from the head-notes in the corresponding cases as reported by Mr. Freeman?

A. I have no recollection of any such case. I prepared them from my own judgment, from reading the opinions, and in every instance arrived at what I thought was an independent opinion.

Q. State whether you have any pecuniary or proprietary interest in the volumes of the Callaghan edition.

A. I have none whatever. I did the work for a stated compensation per volume, which has been fully paid.

Q. In what condition was the copy of these various volumes edited by you as given by you to the printer?

A. The copy of the opinions was the printed opinions from Mr. Myers' edition; the copy of the head-notes was my manu-
482 script; the copy of the statements of facts was principally manuscript. In some cases, where the other edition contained a copy of some document or some part of the record in the case marked in quotation, in order to save the trouble of copying that, I, in some instances, used that copy.

Q. In what condition was the copy of the indexes of the various volumes edited by you as furnished by you to the printer?

A. That was made up entirely of the printed slips from the printed proofs of the head-notes as prepared by me, cut up and pasted on other paper, except where I wrote in between them the cross-references and references to pages; of course, that was in pencil.

Adjourned to Jan'y 16th, 1879.

WEDNESDAY, *January 16th, A. D.* 1879.

Met pursuant to adjournment.

Present: Same as before.

Mr. M. D. EWELL was cross-examined by Mr. LE MOYNE as follows:

Q. How many of the Illinois Reports did you prepare for
483 Callaghan & Co.?

A. Do you mean those that were published? The ones that were published that I prepared were 32, 33, 34, 35, and 36. I

prepared 31, I believe, but that was bought. I was told that they bought the copyright of that, so that that was not actually printed. The only ones that were printed were 32 to 36, both inclusive. I will state that 44 was all printed, but it never was published. As soon as these suits were commenced it was discontinued and never was published.

Q. When did you make your contract with Callaghan & Co. to prepare these books for publication?

A. I could not tell exactly without refreshing my recollection; it was some time in the beginning of the year 1877, but just what date I could not say without reference to letters.

Q. Did you receive any instructions from them as to the manner in which the books were to be prepared?

A. That was made the subject of quite a number of conversations between us.

Q. By your arrangement with them who was to furnish
484 the material to be used by you in the preparation of the books?

A. The only material I was to be furnished with was such as I could get out of the regular reports.

Q. That is, you were to be furnished a copy of the books as furnished by Myers?

A. Yes, sir.

Q. And that was the only material to be used, was it, in the preparation of the new books?

A. Those were all the materials that were used, because I had access to none of them.

Q. Did you do all the work of preparing the work for the printer?

A. From 32 to 36?

Q. Yes; the volumes you have named.

A. Yes; I did; every work, syllable, letter, and character, except, of course, the printed opinions which I referred to in my direct examination.

Q. Everything that was furnished to the printed was furnished by you either in manuscript or print?

A. Yes, sir.

Q. And all the printed material was taken from the books of Myers & Co.?

A. Yes, sir.

Q. Was any instruction given by them to you — should make any change in the syllabus of the cases?

485 A. It was understood, although I don't remember any direct instructions. It was made the subject-matter of several conversations in which it was always understood that I was to prepare my syllabus from the opinion. It was to be original work.

Q. What was the object in making that change in the syllabus of the case?

A. The obvious reason was to avoid infringing the copyright, not to copy it.

Q. State whether in the preparation of these books for Callaghan & Co. you copied all the material in those books except the syllabus,

such as the instructions given in the court below, the names of the judge below that tried the case, the names of counsel that appeared for the parties in the supreme court, and other such material as that; was that or not copied by you from the book of Mr. Myers?

A. It was not what you really call copied, but I got my information of the subject-matter from those books. I could not say that I copied it out, but I got my information on those points from those books.

486 Q. Was not a great deal of that material transferred *verbatim* into your books?

A. There might have been some of it.

Q. Was not there a considerable portion of that material transferred into each one of the books prepared by you?

A. The names of the counsel.

Q. The instructions of the court?

A. Yes.

Q. The names of counsel?

A. Where the instructions of the court purported to be copies of a matter of record it was. The names of counsel, of course, I could not know who they were, except as it appeared from the report.

Q. The names of the judges who tried the cases?

A. Of course, I only knew from the report.

Q. The rules of court, so far as they appear in your volumes, were they copied?

A. The rules in the beginning of the book, do you mean?

A. Yes.

A. Yes, sir; they were.

Q. They were all copied into your book?

A. The rules were.

Q. Were they not just cut out from his books—the printed matter—and sent to the printer in that way?

A. To which do you refer?

Q. To the rules and the names of counsel.

487 A. The rules I think I did; the counsel I could not speak positively as to that. It may have been so in some instances and not in others. I do not remember positively as to that, Mr. Le Moyne.

Q. In the statement of facts was not all the matter which you put *it* into your books copied also from their books?

A. That is a little too broad; I could not answer all the matter. I should have to say no if you say all the matter.

Q. You had no other source of information to get any of it from, had you?

A. I will state I had no other source of information except as I stated in my direct examination where the case had been to the supreme court in an earlier volume.

Q. State in the different volumes sent by you to the printer as cut from the volumes of Myers whether it was rewritten.

A. I will be honest about that with you, Mr. Le Moyne. They were cut out of the book, except striking out the second names—

changing the second names—and I think perhaps I may in one
488 or two instances have changed the pages where I discovered errors, but if you will look at them you will observe I give only the first name in each case—that is, if there is a firm I only give the first one of the firm.

Q. Those alterations were made on the——

A. Those alterations were in fact in that instance made on the printed page.

Q. And the printed page sent to the printer?

A. Yes, sir.

Q. In preparing your books did you in all cases read the syllabus of Mr. Freeman before making your syllabus?

A. I think that in a majority of cases I did. I had it before me, and, of course, I read the whole case; but, as I stated in my direct examination, I formed my judgment from the opinion of the court; came to my determination in that way.

Q. When you found by an examination of the case that the syllabus of Mr. Freeman was taken from the opinion of the court did you *you* then copy from Mr. Freeman's syllabus, or did you get it from the opinion?

A. I copied it from the opinion.

Q. Did you arrange the syllabus in your books to corre-
489 spond with Mr. Freeman's or to correspond with the order of the points as stated in the opinion?

A. My recollection—I have no recollection about that, but I think I always followed the order in the opinions; that is my recollection. I know that the other matter made no impression on my mind, and if I have followed his order it was accidental; it was not intentional. I may have done so.

Q. Did you in all cases examine the syllabus of Mr. Freeman to see if it was contained in the opinion?

A. I could not say as to that, Mr. Le Moyne. I read the opinion through. I can give you my method of procedure if you wish. I read the opinion through in the first place with a pencil. When I came to what seemed to be a statement of the principal decided I would draw a straight line opposite that portion of the opinion which I thought stated the principal which was decided, and so on, until I got clear through to the end, and then I copied those out of the opinion, with such verbal changes as seemed to me to be proper to adapt them to the syllabus. That was my plan of work.

490 Q. In carrying out that plan, when you examined the opinion did you compare the opinion with Mr. Freeman's syllabus?

A. After I had arrived at my——

Q. Why did you do so before you went over the opinion?

A. My recollection is that I turned to the opinion and read that and the statement the first thing. That is my present recollection.

Q. And then read the syllabus?

A. And then looked over the syllabus afterwards. That is my present recollection of it. I may have done differently in some in-

stances. I could not tell as to those details, because I paid no particular attention to it at that time.

Q. Did you examine Mr. Freeman's syllabus for the purpose of avoiding a repetition?

A. I did not.

Q. Or for the purpose of avoiding an infringement of his syllabus?

A. I do not know that I examined it for that purpose.

Q. You intended to avoid it, did you not?

A. Why, certainly, I intended not to copy it.

Q. You did not intend to copy it?

A. I certainly did not intend to copy it.

491 Q. And you say the making of the new one was you took that labor for the purpose of avoiding an infringement of the copyright?

A. What is the question?

Q. I understood you to say that you intended to avoid using his syllabus for the purpose of avoiding a copyright?

A. Yes, sir.

Q. Now, if you intended to do so would you not necessarily read over his syllabus to see that you had not copied it in preparing yours?

A. I did not care whether it appeared to be like it or not, so long as I got at my conclusion from the opinion of the court. Mr. Le Moyne, it was perfectly immaterial to me whether it was like Mr. Freeman's or not, so long as I arrived at my conclusion from the opinion of the court.

Q. And you intended to make your syllabus as if his syllabus had never been made?

A. That was my intention; whether I have succeeded——

Q. You never compared your syllabus with his to see how similar they were?

492 A. I think I did very likely in many instances, probably not in all, but not with that object definitely in view. I may have done so to see how near our judgment coincided, but I arrived at my judgment independently of Mr. Freeman. I found a great many instances where I thought he had made mistakes of judgment—a great many. I may be the one that is wrong. As a matter of fact, I don't know as to that.

Q. What is your best recollection as to whether or not you cut the syllabus from Freeman's book containing the names of counsel, and so on, and sent them to the printer in that form?

A. I did not cut it out in the form of the syllabus, Mr. Le Moyne, wherever I used the name of counsel from the book. If I did not copy it out entirely in my manuscript I let the page stand and cancelled everything else and wrote my name in the manuscript on the same page it was printed on. I did not cut it out.

Q. You took the page of his book?

A. And cancelled everything except——

Q. Except what you wanted?

A. Except what I wanted. You refer to the names of counsel, I suppose?

Q. Yes.

A. Except the names of counsel, and those I frequently
493–499 transposed—varied.

Q. Look at the names of counsel on page 193 of volume 32.

A. I don't know whether that is the same page in the other copy.

Q. State whether there is not a mistake made in the name of B. F. Ayer.

A. It is quite possible.

Q. How is it spelled in your copy?

A. It spells Ayre here. I got my information from the other book. If this is incorrect it is quite likely that I got my mistake in the other book, as I said I got my information from there. I do not know how his name was spelled. I do not know anything about it. It is so spelled in Mr. Myers' edition.

Q. Look at volume No. 33 of your book, page 438. State whether the order in which the points are stated are not the same in your book as Mr. Freeman's, and whether that order corresponds with the order of the points decided in the opinion.

A. Possibly it may be so. I have not examined them since I made them.

Q. Look at the book now and state.

(Witness refers to the two books.)

A. I appear to have three in mine and there appears to be
500 four in Mr. Freeman's, but the order seems to be substantially the same.

Q. Now, state whether the order is the same as the order of the points decided by the court.

A. I suppose that the reason that I adopted that order was that if I put this second one first you would have to read the second clause in order to understand what the first meant, as the natural order, I suppose. I arrived at that from the opinion.

Q. You are asked first whether the order of the points decided in your syllabus corresponds with the order in which the points are decided by the court.

A. Well, Mr. Le Moyne, I could not answer that question without referring to Breese. I remember that I read the opinion of Breese, and I presume that that entered into my judgment in deciding the order. I could not tell without looking at the original opinion. The court say in this opinion: "The opinion in this case in Breese is so full and satisfactory on all questions raised in this case that we refer to that and make it the basis of our opinion." Now, what the order is of that case in Breese I cannot tell without referring.
501 I presume that governed the order in making the syllabus in this.

Q. You have no other explanation to offer of it?

A. I have not without looking at that.

Q. You have no recollection now of anything more about how

these syllabuses were prepared than you have stated; you can only give an explanation upon reference to each one?

A. I can only add to what I have stated by your calling my attention particularly. That is my present recollection, but with reference to this particular opinion I think that I arrived at my conclusion as to the order from reading Breese.

Q. In page 439 of the same volume and the same case you have been testifying in regard to, state whether the note on page 439 is not taken out of the statement of facts in Freeman's book.

A. My recollection is that it was.

Q. Look at the volume and see.

A. I find that it is in the original report in quotation marks, and I have no doubt that I got it from there. I had no access to the original records.

502 Q. In the understanding between you and the Callaghans, made at the time you were engaged to do this work, were you instructed to use all of the material except the syllabus?

A. No, sir; I was not. They gave me no definite instructions about it.

Q. You say there was an understanding that you were not to use the syllabus for the purpose of avoiding the copyright. Was there any other material that you were not to use for the same purpose contained in Freeman's book?

A. They did not tell me what I should use and what I should not, but they told me to report it—to make a new report—and I made it out of such material as they furnished.

Q. Did they tell you the object of making a new report?

A. Well, I suppose the object was to sell them. Of course, I understood they did not want to infringe Mr. Myers' copyright; that was understood all the time, and I did the very best I could with the materials I had to accomplish that object.

Q. And the only materials you had were these books?

A. That is all, except as I referred to the earlier volumes where the cases had been to the supreme court on a former occasion.

503 Redirect examination by Mr. HIGH:

Q. Do you mean to be understood that in all cases you prepared your syllabus from your own independent original investigation of the opinion of the court and not from Mr. Freeman's syllabus?

A. That certainly was my intention.

Q. And did work in that way?

A. Yes, sir.

Q. In all the instances?

A. Yes, sir; I say if I had done anything different from that I am perfectly unconscious of it. I certainly did not intend to, and I should be pretty apt to know it if I had.

EUGENE B. MYERS, Complainant,
vs.
BERNARD CALLAGHAN *et al.*, Defendants. } In Chancery.

Testimony taken before Henry W. Bishop, master in chancery of said court, Tuesday, the 21st day of January, A. D. 1879.

Present: J. V. Le Moyne, Esq., solicitor for the complainant, and James L. High, Esq., solicitor for the defendants.

504 MARSHALL D. EWELL, was recalled on behalf of defendants, and, being examined in chief by Mr. HIGH, deposes and says as follows:

Q. Have you made any examination of your books or memoranda for the purpose of fixing the date of your contract with Callaghan & Co. for re-editing volumes 32 to 36?

A. I have.

Q. What have you found upon that point?

A. I find that I made a minute of it in my diary, and from consulting that minute my memory is refres-ed, so that I am able to testify that I made the contract on the 16th of February, 1877, for re-editing volumes 31 to 36; 31 was not printed.

Q. State, if you can, when you actually began your work upon those volumes.

A. The volumes were expressed to me on the 20th of Feb-uary and I commenced working upon them upon the 26th.

Cross-examination by Mr. LE MOYNE:

Q. Which one did you begin on?

A. I began on 31.

Q. How long did you work on it?

A. I finished it the 31st of March—that is, my work on it; editorial work.

505 Q. When did you begin on 32?

A. I commenced it the 31st of March.

Q. When did you finish 32?

A. I finished it the second day of May, 1877.

Q. When did you begin on 33?

A. The 3rd of May; when I say I finished it, of course, I do not mean the index; I could not make that until I got the copy back; I mean I finished the manuscript for the printer. Of course, I could not finish it until I got the proof back?

Q. When did you finish 33?

A. I finished 33 on the 26th day of May, 1877.

Q. Can you tell from your memoranda when you finished the index of each volume?

A. I do not think I can, because I did that at intervals between the other work.

Q. How long after the volumes were finished by you, as you have stated, was it before you finished the index?

A. Usually about between two and three weeks, as near as I can tell.

Q. Now, go on and tell when you began the next volume, and when you finished it.

506 A. It seems that I took 35 next. I commenced 35 on the 28th of May. I finished it, except the index, on the 26th of June. I find that I was to work on the index of 33 on Monday, June 18, 1877. It usually took me two days to finish the index.

Q. Now, go on to the next volume that you worked at.

A. I commenced on 34 on the 28th of June and finished on the 23rd of July.

Q. Except the index or with the index?

A. Except the index. It seems that I did not get through so quick as I though I did on my direct examination. I was a little mistaken. I did not have my minutes. I commenced on 36 on the 26th of July. I finished the index of 34 on the 6th of August. I finished and mailed the index to the 35th on the 7th of August. I see from my diary that I was at work on the index to the 34th Illinois on August 16th, but I do not appear to have minuted just when I sent it. It might have have been reading the proof of the index. I presume it was. I finished the 36th Illinois on the 15th day of September. I desire to correct my previous examination in accordance with these dates. I spoke from recollection then

507 with no written memoranda. I am now able to state positively as to the dates; 36 was finished without the index on the 28th of September. I finished the index to the 36th Illinois and mailed it on the afternoon of October 5th, 1877.

Redirect examination by Mr. HIGH:

Q. All these dates which you have now given us you are enabled to give us, I understand, by referring to your memorandum book or diary that you kept at that time?

A. Certainly.

Q. State, if you please, what was the cause of delay in preparing the index in each case as you have mentioned.

A. It took me between two and three weeks to get the body of the book in type, and I waited till I got a complete set of proofs of the whole book from the beginning before I made my index. In order to save writing I used the printed proofs as copy, cut it up and pasted it on.

Q. Printed proofs of the head-notes?

A. Of the head-notes which I received from the printer at Madison—Madison and Chicago.

Q. In what shape was that prepared and published, and from what source was it derived?

A. It was written up by me after a study of the case and from the various sources that I could find in the New York law library, where I was then at work.

Q. State whether it was the result of independent investigation on your part or the result in any degree of the use of the labors of Mr. Freeman, or of both sources.

A. There was nothing in any labors of Mr. Freeman that related to the matter contained in these notes.

Q. It was entirely the result of your own independent investigations?

A. Yes, sir. The notes were generally legal articles on the point involved in the case.

513 Q. State whether — volumes 37 and 38 as edited by you you made any preliminary or condensed statement of the contents of the head-notes to be published in connection with the different cases; if so, in what way and to what extent?

A. Yes, sir; that was done to the usual extent.

Q. From what sources was the information drawn which was used in preparing those condensed statements or head-lines?

A. Those catch-lines were written last, after the syllabus had been written, and were a condensation of the syllabus.

Q. Of your own syllabus or Mr. Freeman's?

A. Of my own syllabus. I would write in fact all of the sections or clauses of the syllabus first, generally, and conclude by writing those catch-lines.

Q. I will ask whether in any of those instances in volumes 37 and 38 as edited by you you omitted statements of facts of the cases reported; if so, to what extent and for what reason?

A. Yes, sir. I have no prepared statement of the extent to which that was generally done, but I generally omitted them for the reason that the opinion contained a complete statement of the facts, and

514 the exceptions were those cases in which some document or exhibit or section of the pleading or record in the case was not given in the opinion, or, if given in the opinion, was also given in the reporter's statement, and in those cases, as I said before, I used the printed copy of the document or exhibit or record.

Q. I will ask whether in volumes 37 and 38 as edited by you you omitted to any extent the argument of counsel as they appear in the volumes of the original edition?

A. Yes, sir; I think that in some cases the authorities or a portion of them may have been retained in a condensed form.

Q. In what condition was the copy of the volumes 37 and 38 as furnished by you to the printer, as to whether it was manuscript or printed copy?

A. As furnished to the printer it always consisted of the syllabus and notes in manuscript and the opinion cut from the Freeman edition.

Q. But the head-notes and statements being in manuscript, as I understand it?

A. Yes, sir.
Q. Your own manuscript?
A. Yes, sir.
Q. In what condition was the copy of the index of volumes 37 and 38 as furnished by you to the printer?
515 A. They consisted of slips of proof of the syllabus as forwarded by him to me arranged in the usual index order with such manuscript additions, pagings, cross-references, etc., as would convert it into an index.
Q. Was that copy as furnished by you to the printer for index drawn in any way or manner from the printed volumes of Mr. Freeman's edition?
A. It was drawn wholly without reference to Mr. Freeman's index or to any part of his work.
Q. And entirely from your work?
A. Entirely from my own work without looking at his at all.
Q. I will ask whether, in any cases in volumes 37 and 38 in the preparation of your head-notes in the manner in which you have testified, you made use of the language of the court to any extent; if so, to what extent?
A. To a very slight extent, if any.
Q. What was the general rule or plan adopted by you in all the cases in those two volumes in that regard with reference to the use of the language of the court in framing your own head-notes?
A. My general rule was not to use the language of the court at all, but my own language.
516 Q. I will ask whether, in each instance, before preparing your head-notes, as you have testified, you have read over the opinion of the court?
A. Yes, sir.
Q. Do you mean to be understood, then, to the effect that the head-notes as prepared by you were the result of your independent investigation of the language of the court rather than the adoption of the language itself?
A. Yes, sir.
Q. What experience have you had generally in the use of law books, and especially law reports?
A. My experience prior to that time had consisted of some four or five years' study of the law and nine years' practice in New York and about four or five years' teaching, with some slight practice, here in Chicago.
Q. Have you had occasion in the course of that experience to examine and make use of the various law reports in the country to any considerable extent?
A. To a fair extent; yes, sir.
Q. What, in your opinion, would be the effect of the Callaghan editions of volumes 37 and 38 as compared with the Myers' edition, with reference to a liability of mistaking the one for the other as published by the two publishers?
A. Well, I think that the endorsement of the name of the
517 editor upon the back a different name from that which was endorsed upon the Myers' edition and the difference in the

names of the publishers and the difference in the size of the works and the style would be such that I could hardly conceive of a lawyer buying one under any supposition that *the* was buying the other.

Q. State whether, in your opinion as a lawyer and as a legal writer, accustomed to the use of law reports, a purchaser of ordinary intelligence desiring one of these volumes would be liable to be deceived and purchase the other.

A. Well, I cannot conceive how any lawyer could be deceived.

EUGENE B. MYERS, Complainant,
vs.
BERNARD CALLAGHAN *et al.*, Defendants. } In Chancery.

Testimony taken before Henry W. Bishop, master in chancery of said court, Saturday, the 11th day of January, A. D. 1879.

Present: John V. Le Moyne, Esq., solicitor for complainant, and J. L. High, Esq., solicitor for defendants.

VAN BUREN DENSLOW, a witness on behalf of the defend-
518 ants, was cross-examined by Mr. LE MOYNE, and deposes and says as follows:

Q. Mr. Denslow, how much work did you do in preparing for publication volumes 37 and 38 of Callaghan's reprint?

A. All that was done by the editor and reporter.

Q. Specify.

A. All that was not done by the printer.

Q. Did you do everything except what was done by the printer?

A. Yes, sir.

Q. And binder, of course?

A. Yes.

Q. Did you furnish all the copy?

A. Yes, sir.

Q. And read all the proof?

A. Yes, sir.

Q. Of the whole book?

A. Yes, sir.

Q. Where was the work done by you—I mean in Chicago or elsewhere?

A. I think it was begun in Chicago, and the bulk of it was done in New York and Brooklyn.

Q. In the preparation of these volumes what material was furnished by any one?

A. I was furnished with volumes 37 and 38 as prepared by Mr. Freeman.

Q. You mean that you were furnished copies of the regular report?

A. Yes, sir.

Q. The Myers edition?

A. Yes, sir.

Q. How many copies of each volume were you furnished?

A. One.

Q. By whom?

A. By Callaghan & Company.

519 —. Did you cut them to pieces in making up the new volumes?

A. Yes, sir.

Q. What other material did you have from which to make your reprint?

A. None, except in relation to the notes.

Q. The whole information that you had, then, and put into the reprint, except the notes, was derived from the book as published by Myers & Company?

A. From the opinions in that book; yes.

Q. When you say from the opinions you mean what was in that book?

A. Yes, sir.

Q. And you took the opinions from that book?

A. Yes.

Q. And you took everything else from that book except the notes?

A. Yes.

Q. When you did this work did you not know that the books of Myers & Company were copyrighted?

A. I would regard that as a legal question.

Q. Was there not a notice in the volumes of Myers that they were copyrighted?

A. I presume there was. I do not remember whether I saw it or not.

Q. You did not look for it, you mean?

A. I did not regard it as of any consequence, as I had my

520 own theory in relation to the copyright.

Q. Now, state how the work was done by you in furnishing the material to the printer.

A. When I had prepared the syllabus and the notes I cut out the opinion and pasted it to the manuscript of the syllabus and notes and forwarded the opinion with my manuscript of the syllabus and notes to the printer.

Q. How long a time did you spend on each volume?

A. From about April 1st to about October for both volumes.

Q. You have stated that you did this work at a stated compensation. How much was that compensation?

A. It was $300 for the two volumes.

Q. Mr. Denslow, you have said that you were engaged to report, edit, and annotate volumes 37 and 38?

A. I used the word re-report, that being the word that was used by Callaghan & Company in relation to that species of work. It is their word, and that was the word used in the answer.

Q. Did you not, on the title page, put your name on as reporter—that you prepared?

A. I think it stated that it was re-reported and annotated.

521 Q. When you claimed to be the re-reporter you then only intended to designate the work of copying from the other book and adding notes; is that so?

A. I do not think that I chose that word or used it myself.

Q. Please look at the title page of volume 37. State how it appears on that volume.

A. It so appears; yes.

Q. Look at the title page of volume 38. State how your name appears; give the statement in full from this volume.

A. They both appear in these words: "Re-reported and annotated by V. B. Denslow, LL. D., professor in the Union College of Law, Chicago." I do not think that I furnished any title page to either volume; I would modify the previous statement that I furnished the entire work.

Q. You read the proof, did you not?

A. I do not think I did to the title page.

Q. You do not mean to say, then, whether you did or not; or do you mean to say you did not?

A. I don't think that I did; my recollection is that I did not; I did not see it until it was printed.

Q. Don't you remember that you sent the title page of the
522 volumes that had been furnished you to the printer?

A. I do not.

Q. With the alterations made thereon?

A. I do not.

Q. You do not remember whether you did or not?

A. I don't remember that I did, and I think I did not.

Q. You have said in your direct examination that the notes were generally legal articles on the point involved in the case?

A. Yes, sir.

Q. Please designate in volume 38 any such notes.

A. (Witness examines volume 38 as printed by Callaghan & Company.) There is one on page 45, and 9 are occupied by one; bottom pages 198, 199, and 200 are occupied by one; bottom pages 158, 159, 160, and 161; bottom pages 151, 152, and 153; bottom pages, 307, 308, and 309; bottom pages 333 and 334; bottom pages 408, 409, 410, 411, and 412, 428, 429, 430, 431, and 433. There is a note added, but not written by me, by Professor Hanna, of the Iowa University; a note sent me by Mr. North on the bottom of pages 472 and 473. I believe those are all.

Q. Now, look at 37.

523 A. In volume 37 there is a note on bottom pages 25 and 26; bottom of pages 62, 63, and 64, 70, 94, 136, 137, and 138; bottom pages 207 and 208, 233, 234, 235, and 236, 247 and 248, 251 and 252, 282 and 283, 294, 295, 296, 297, 298, 299, and 300, 315 and 316, 331, 332, and 333, 343, 344, and 345, 365. I believe that is all.

Q. Are these the notes you designated in your testimony as legal articles on the point involved in the case?

A. Yes, sir; in some instances the term "summary of authorities and citations" might be more applicable.

Q. In the preparation of the head-notes you say you read over the head-notes in the edition of Mr. Freeman, did you?

A. I think I did in most, if not all, instances.

Q. Did you not read them over in all instances?

A. I think I did.
Q. Did you make an affidavit in this cause?
A. Yes, sir.
Q. Were you as familiar with the facts then as now?
A. Yes, sir.
Q. You state in that affidavit that you took pains to avoid copying Mr. Freeman's notes; is that correct?
A. I do not remember whether that is stated in the affidavit or not.
524 Q. Your affidavit contains this statement: "Affiant says that the entire editorial work performed by affiant in connection with the several volumes of Illinois Reports edited by him has been performed with elaborate and careful pains not to use any materials furnished by Mr. Freeman or peculiar to Myers & Co.'s edition of said volumes;" what did you mean by that statement?
A. I meant not to adapt into the work as I should make it up any materials.
Q. Why did you take careful pains not to use the materials furnished by Mr. Freeman?
A. Because they were not necessary and not so good, in my judgment, as I could supply myself.
Q. How did you supply any other material except what you got from Mr. Freeman's book? You have already stated that you had no other materials.
A. I do not see anything paradoxical about that.
Q. What other materials did you have, then, if you took careful pains not to use any of the materials furnished by Mr. Freeman?
A. I did not regard the opinion as being furnished by Mr.
525 Freeman, although it is printed in a book with his name on. I regard it as furnished by the court.
Q. Was there any other material contained in those books that you did not consider as being furnished by Mr. Freeman?
A. Any other material than the opinion?
Q. Yes.
A. Well, yes.
Q. Did you use that other material that Mr. Freeman furnished, then?
A. I say there was other material than the opinion of the court which I did not regard as furnished by Mr. Freeman.
Q. What was it?
A. The documentary evidence that might be contained in statement of fact.
Q. Wasn't that material furnished to you by Mr. Freeman in his book?
A. It was furnished by the record of the case.
Q. Was it also furnished by Mr. Freeman's book?
A. That was not anything in which he could have any property.
Q. I am not asking you about the right of property; I am merely asking you where you got your materials. Now, I ask you particularly as to whether it was contained in Mr. Freeman's book?

526 A. In the same sense with the opinions furnished by Mr. Freeman in the same sense those other materials would be.

Q. Did you have any other way to get it?

A. I did not go to the records.

Q. Did you not take it right out of those books of Freeman's?

A. The documents?

Q. Yes; all of them.

A. I assumed that the copies published by Mr. Freeman were copies of the originals.

Q. Did you or not take it out of his book? That is the question.

A. I used the material as printed in his book.

Q. What matter was it that you referred to in your affidavit when you stated that you took elaborate and careful pains not to use the materials furnished by Mr. Freeman?

A. It was the syllabus and such portions of the statements of facts as were the product of Mr. Freeman's thought and mind.

Q. Was there any portion of the statement of fact in the cases as published by Mr. Freeman which was not a matter of record? *Q.* Was there any portion *Q.* in Freeman's book of the state-
527 ment of facts which was not of record and which could be distinguished from the other portions as being the product of Mr. Freeman?

A. The sources of his statements were probably in all cases matters of record, but his statements themselves were not in all cases matters of record. In some cases they were matters of his own composition.

Q. Is that the portion of the material in Mr. Freeman's book which you stated you were careful to avoid taking?

A. The latter; yes.

Q. That was his own composition?

A. Yes, sir; wherever anything appeared to have been written by Mr. Freeman I endeavored to avoid using it.

Q. Why did you endeavor to avoid taking it?

A. So as to avoid, if practicable, the necessity of raising the question whether a State reporter could have a copyright on his work, which would be raised if his matter were used.

Q. And that consideration was influencing you at the time you were preparing these cases, was it?

A. I think so.

Q. Please take Mr. Freeman's volume 37 and point out an
528 example, in any case, of the statement of fact containing a portion of his original composition which you would consider you did not take, and designate the difference between that and *that* the other portions of the statement of fact. I will ask you to look at his book alone, without comparing it with your book, and find an example.

A. Without looking at my book I could not tell whether I used it or not.

Q. I wish you to state from his book an example of what you consider his composition.

A. As distinguished from matters of record?

Q. Yes.

A. I cannot remember now what parts of the work I would have regarded or did regard at the time that I was engaged in this work as being Mr. Freeman's composition and what parts as being taken from the record by the use of the -cissors. Subsequent experience in examining the records, for the purpose of making up other volumes, has shown me.

By Mr. LE MOYNE: I object to the answer as not responsive to the question.

529 The WITNESS: I will say briefly that many portions of these books which I would have regarded at the time I was at work upon them as being the composition of Mr. Freeman I would not now regard as being his composition.

Q. After looking over between one and two hundred pages of Mr. Freeman's volume 37 have you been able to find a single sentence or a single paragraph that you would consider original composition and not taken from the record by Mr. Freeman?

A. I could not identify any sentence or paragraph as being the original.

Q. At the time you made these books, however, do you now remember that there were portions of them that you did not feel at liberty to use, and those are the portions, are they, that you say — took elaborate and careful pains not to use? Is that the case?

A. I made this distinction, whether it was correct or not, between the occurrence of the fact and Mr. Freeman's mode of stating it. I thought that his mode of stating it was his own, and that the fact belonged to the world.

Q. You consider, then, that you did not have the right to
530 adopt his way of stating the facts contained in his reports?

A. Yes; so far as he was the author of any statements himself—as far as they were not taken from the record.

Q. And your recollection is and your impression then was that there were portions of the book that you could not use for that reason?

A. Yes, sir; in passing through the book at that time I knew there were considerable portions of the book which I supposed to be Mr. Freeman's composition which I would not now suppose.

Q. And you then supposed that you were not at liberty to use those portions of the book?

A. Not in manner and form as used by him.

Q. And the reason that you did not feel so at liberty was because you supposed that would be violating a copyright, or was there any other reason? If so, state it.

A. Not violating a copyright, but involving the work in a question.

Q. Had you been advised with by Callaghan & Company as to whether your work was a violation of the copyright?

A. Not as counsel.

Q. I do not mean as counsel, but as an employee doing
531 this work for them or in any other way. Was your opinion on that question asked by them?

A. I think I should say it was not.

Q. Did you state to them your opinion as to whether the book as made by you would be or was a violation of a copyright?

A. I was requested and employed by them to render services of a certain kind in a certain way, they judging for themselves of the nature of the question of copyright and making up their judgment for themselves and upon a——

Q. I am not asking you at all about their judgment. I am asking you what you said to them in regard to the copyright, if anything. That is the limit of my question.

A. Well, after stating that I was not advised with in relation to the matter of copyright as counsel, but was instructed by them to perform specified services in a specified way, they following their own judgment relative to the copyright question, I think nothing else that I may have said would be proper to repeat.

Q. Then, I understand you to decline to say whether or
532 not you conversed with them on the subject of your book being a violation of the copyright of the other book?

A. I think there were conversations in relation to the subject of copyright, taking the form of suggestions and instructions on their part as to the mode in which they wished this work done.

Q. You were instructed so to do it as not to interfere with the copyright of the other book, were you or not?

A. As I said before, I was instructed to perform certain services in a certain way, they acting upon their judgment as to whether it would interfere or not.

Q. Did they tell you how to do this work?

A. Yes.

Q. And it was under their instructions that it was done in the manner you have stated?

A. Yes.

Q. Did they then state that by doing it in that way you would avoid the copyright of Myers or anything to that effect; if so, what?

A. It would not be practicable for me at this distance of time to state correctly the conversation that we had on that point.

Q. Well, there were conversations, then, on that subject between you and them at the time you were at work on these books?

533 A. There was a conversation at the time I was employed and before I went East.

Q. On this subject as to how the work was to be done?

A. Yes.

Q. And its effect on the copyright of the other book; now, fix the date of that other conversation.

A. Well, I think any oral conversation on that subject must have been prior to my departure to New York, which, as nearly as I can remember, was in April, 1877.

Q. The conversations, then, according to your best recollection, were about April, 1877?

A. It may have been earlier; it may have been February or March, 1877.

Q. Did they at that time designate to you what portions of the contents of Mr. Freeman's book would be covered by the copyright, or did you designate to them what you thought was covered by the copyright?

A. They stated to me that the opinions as published by Mr. Freeman were public property and that they wished the reports of these cases re-edited by rewriting the syllabus and annotating the syllabus, and the statements of fact, so far as statements of fact should
534 be preserved, being obtained from the opinions and not from Mr. Freeman's matter or matter of which he was the author, but where the documentary evidence appeared in the statements of fact purporting to be taken from the record I think it was stated that that might be used, or if not so stated by Callaghan & Company I learned from an examination of and conversation with Mr. Ewell, who had already done a portion of the work before I was engaged upon it, that that was being done.

Q. You understood Callaghan & Company, then, in directing you what portions of Freeman's or Myers' book to use, to distinguish between documents which come from the record and other statements or portions of the statements contained in his volume?

A. I would not say that there was any conversation to that effect, but simply that I acted with that impression on my mind.

Q. Did I not understand you to say that in selecting the portion from Freeman's book that you used you acted under instructions from Callaghan & Company and that your book was prepared
535 in that way?

A. The instructions were general, as I have said, to make up the new volume, using the opinions as the source of my information, rewrite the syllabus and the statements of fact.

Q. Why were the syllabuses rewritten; what was the reason given for that?

A. So as to make a new book.

Q. Was that the only object?

A. The object was to make a book which should be the property of Callaghan & Company, and avoid any question of copyright.

Q. How did you know that was the object?

A. Provided they were a copyright in the other edition.

Q. How do you know that was the object of Callaghan & Company in having the syllabuses rewritten?

A. Well, that was the general impression made upon my mind by their conversation.

Q. You mean to say the impression made upon your mind was that it was necessary for you to avoid a copyright; is not that so?

A. Not if that mode of expression assumes that they regarded the copyright as outstanding against them in the case.

Q. That is to say, you were to avoid it if there was a valid copy-copyright?

536 A. To avoid the question of copyright.

Q. Under these instructions you prepared the new books?

A. Those two; yes.

Q. After the books were published did you have any conversation with them about whether you had or not avoided the question of copyright; whether you had violated any copyright?

A. No distinct conversation that I remember.

Q. You do not remember, then, ever having any conversation with them on that subject after the book was made by you?

A. I was sometimes present incidentally when general conversations were being held after the application for an injunction had been made by Mr. Myers, and when the preparation of affidavits for the purpose of resisting that application was in progress.

Q. In the preparation of these books and in your conversation with Callaghan & Co. was it not understood or said among you that *that* you could not use the syllabus as prepared by Mr. Freeman, and did you not so understand it?

537 A. I was instructed not to use the syllabus as prepared by Mr. Freeman, if you mean by the form of your question to imply that they thought or that I thought that I could not use it without violating a copyright—I do not know that it was because there was still another contingency taken into consideration as to whether there was a copyright.

Q. (Question read by reporter.)

A. I was instructed not to use any of Mr. Freeman's syllabus matter.

Q. When you say there were portions of Mr. Freeman's book which you took elaborate pains to avoid using does that include the syllabus?

A. Yes, sir.

Q. Is it not true that you took some trouble to change the syllabus for the purpose of making a change?

A. Well, change would imply that I used his syllabus as changed, and therefore it would be an improper word to use in that connection. I took some trouble to adopt a totally different system in making up my syllabus.

Q. I am not asking you about a system. I am asking you about the result.

538 A. I did not change his syllabus, because that would imply that I used a portion of his syllabus modified by *him* myself. I simply wrote a new syllabus.

Q. After examining his?

A. I studied the entire case, including what he had written in relation to it and the opinion, generally taking pains to observe the mode in which he had prepared his syllabus and whether I regarded it as a good one—whether I regarded it as correct.

Q. When you regarded it as a good one did you adopt it?

A. No, sir.

Q. You still prepared a different one?

A. Yes, sir.

Q. Mr. Denslow, I will ask you to look at the syllabus in volume

37 of Mr. Freeman's, page 105, compare it with the syllabus as prepared by you, and point out the difference between the two. Is your syllabus not divided into sections just as his is—into five sections?

A. The number of points in the syllabus arises from the number of points decided in the opinion and the order of the points in the syllabus is governed by the order in which they appear in the opinion. In both Mr. Freeman's syllabus and mine the order of
539 statement of the points in the syllabus appears to be the same as the order of their statement in the opinion, and that is the natural mode of extracting a syllabus from an opinion by whomsoever or howsoever often it may be done. There will be cases in which the number of points arrived at will be the same and the order in which they are stated will be the same.

Q. I wish to call your attention to head-note number 3, both yours and his. I wish you to state if one is not a *verbatim* copy of the other.

A. No, sir; it is not.

Q. Give the words that are not in common.

A. Where Mr. Freeman says "discretionary" I say denial of or in error.

Q. Is there any other difference between the two; or, with the exception, is not yours a *verbatim* copy of his?

A. Both consist essentially of a line taken from the opinion.

Q. I understood you to state, in your direct examination, that you made use of the language of the court to a very slight extent, if any; was that correct?

A. Yes, sir. I would say that in some of those cases the opinion involves no law, and is a mere perfunctory duty on the part
540 of the judge in disposing of the case, and there is no opportunity in reporting the case with safety to expend much original force in composition; but in others, where complicated questions are involved and points of law of considerable intricacy are really decided, I found that a very useful and desirable work could be performed in writing a syllabus that stated the point decided.

Q. Have you any further answer to make in regard to the syllabus to which your attention was called?

A. In regard to that particular clause?

Q. That particular syllabus.

A. I think that elements are introduced in my syllabus which are not contained in Mr. Freeman's. First, in the first clause my syllabus states the mode in which the defendant would abide by his exception, to wit, by failing to file a replication, which Mr. Freeman's syllabus does not.

Q. Examine the first section of his syllabus and see if it is not there.

A. There is nothing of the kind in it that I can see. It is not there—the words "by failing to file a replication."

541 Q. You think that makes an essential difference between your syllabus and his?

A. Well, it is not in his syllabus. It simply indicates that I was looking at the opinion and not at his syllabus in preparing that syllabus. My second point is a totally different statement from his second point, and I do not see any resemblance between them other than the fact that he has condensed ten lines of the opinion into one sentence of three lines and I have condensed ten lines of the opinion into a totally different sentence—different in its literary conscruction and style and quite different in its legal meaning. His statement is that, under given circumstances, a party can claim no credit; mine is that a certain set of circumstances does not amount to a payment until a given event happens. I think that the fourth point of the syllabus, the idea that is embodied in my first line, to wit, that in this case the summons and return of service have both been lost from the files, is not embodied in Mr. Freeman's syllabus at
542 all and is essential to a proper statement of the point, the materials for both being derived from the opinion.

Q. Read the heading of the second point of the syllabus as given by Mr. Freeman, as also the one given by you.

A. His reads, "Collateral, deposit of, not payment;" mine reads, "Collateral not payment until paid."

At this point the examination was adjourned to Monday, January 13th, at 9 o'clock a. m.

MONDAY, *January* 13, 1879.

Met, pursuant to adjournment, at 9 o'clock a. m.

Present: Same as before.

The cross-examination of VAN BUREN DENSLOW was resumed by Mr. LE MOYNE as follows:

Q. In making these books did you consider that you had a right to take from Mr. Freeman's books that portion of the matter not included in the opinion which he had collected from the records of the cases, such as the arguments of counsel, instructions of the court below, and other matters of that character?

543 Objected to as incompetent.

A. It strikes me that the question is what was done, not what I considered.

Q. Do you decline to answer the question?

A. The answer to that question would involve the statement of my opinion as a lawyer concerning the entire legal merits of this controversy, and I do not conceive that anybody is entitled to that without paying for it.

Q. You say that you were instructed by Callaghan & Co. as to how the work was to be done in the preparation of these books. Did you receive from them any instruction on this question as to the use of the other material besides the opinions in the books of the complainant?

A. I have stated in full all the instructions that Callaghan & Co. gave me. Their application to any particular subject-matter can be made by inference as well *as* by one person as by another.

Q. I do not wish an inference. I wish a direct answer to the question now asked.

A. I do not remember any more specific instruction than
544 I have already stated.

Q. You do not remember any instructions, then, from them as to your use of the materials contained in the complainant's book and not in the opinion?

A. Not specifically.

Q. Well, generally or specifically?

A. The instructions were to derive my information from the opinion for the purpose of writing up the syllabus and the statement of fact. As to the briefs of counsel, I think the summary of authorities was canvassed *pro* and *con*, and I don't think that any specific instructions were given in relation to the use of the authorities one way or the other.

Q. When you say it was canvassed do you mean to say you and they discussed the question as to whether you had the right to use them from Freeman's book, or what do you mean?

A. It was understood that the briefs from which those summaries contained in Freeman's book ——

Q. Understood between whom?

A. It was understood as a matter of common information possessed by us both.

Q. You and Callaghan & Co.?

545 A. Yes; that those briefs were on file; that this matter was taken from the briefs; that we were not entitled to use the language or composition of Mr. Freeman, but the fact that certain authorities or cases were cited in a particular case was probably regarded by both of us not as a matter of literary composition, but as simply a fact, and there was no copyright on the fact on behalf of Mr. Freeman or any other person, and that the authorities might be cited.

Q. These are the questions that were canvassed between you, you say?

A. Well, I think that illusion was made to them in conversation, although there may not have been before I left for New York; it may have been afterwards. I am not able to distinguish definitely.

Q. State when it was, as near as you can.

A. Some conversation was had upon those points either before I went to New York or after my return from New York and after the work had been done; whether it was before or after I
546 could not positively say. The fact is that the conversation I had with Callaghan before going to New York and going on with the work did not occupy five minutes, I presume, perhaps not more than three minutes, in all; it was very brief.

Q. They knew that you had no other way, did they not, of getting information you put in your book unless you took it from the book of Myers?

A. Or unless I went to the records at Ottawa.

Q. They knew you did not go to the records, did they not?

A. Yes.

Q. Look at page 172 of the book of Callaghan & Co. and the same on the book of Myers. State how many divisions are made of the head-notes first in Myers' edition and then in yours.

A. There are five divisions in Myers', although they are numbered as four. There are four divisions in Callaghan & Co.'s edition.

Q. Give the first word of the first division.

A. "Fraud."

Q. Give the same heading of yours.

A. "Fraud."

Q. Give the first catch-word of the second division in each.

547 A. That is the same.

Q. Look at the third division; give the heading in your book of the third division.

A. Rule to produce.

Q. Give the heading of the fourth division in Myers' book.

A. Rule of court to produce papers.

Q. Examine the fourth division of Myers' book and compare it with the third division of yours, and say whether they are not the same. If not, what are the differences?

A. There is no resemblance in literaty composition whatever. One is, including the catch-line, six lines in length; the other is about three lines. Mr. Freeman's is a statement involving a portion of the facts of this particular case; mine is a statement simply of a rule of law not involving the facts of any particular case. His applies to the real particular kind of paper that was used in this cause, to wit, the remaining part of a letter, a portion of which he had attached to a deposition, or show cause thus specifying the

548 kind of paper to which it assumes that the rule relates. Inasmuch as the kind of paper which the party was ruled to produce is entirely immaterial, I, in the statement of the point, say simply a rule to produce a paper. I do not consider it even a case of literary correspondence such as the law-books are full of. Any person who will take, for instance, Myers' Digest of Illinois Reports and compare the classification preceding the head of evidences with that in Abbott's New York Digest they will see a case of infinitely stronger correspondence than this or any similar case. In relation to this syllabus, on page 172, my fourth point is not in Mr. Freeman's syllabus that I am able to see at all, and the difference in the mode of statement of my first and second points is so complete that no lawyer could identify them as belonging to the same case, notwithstanding they are both headed with the prefix "Fraud," and both relate to fraud, which is a very comprehensive title. My third point differs from his fourth in such a separation of ex-

549 traneous matter from the point itself as leaves my statement a clean and well-cut point of law, totally unlike in its substance and construction his fourth point, and an examination of the whole indicates that no man living could have written my syllabus from looking at his. My statement and the mode in which the question arises is different.

Q. Turn to page 186, read section number four, the head-note

there, and compare it with the corresponding section and head-note in Myers' book.

A. I do not see that there is any section four in Myers' book.

Q. Section three; read the section, so it may go in as part of the testimony here, first in Myers' book.

A. Mine is put in quotations.

Q. You are asked first to read from Myers' book section three, the head-note of the case.

A. Both of them are copies.

Q. You are asked now to read from Myers' book the third section of the head-notes.

A. That is a command; that is not a question; anybody can read.

Q. Do you decline to do so?

A. Yes.

550 Q. Will you read the section as it appears in the book prepared by you? I repeat the question.

A. It is not a question; it is a command.

Q. Do you decline to do that?

A. Yes, sir.

Q. Will you point out the difference between the third section of the head-note in this case and the fourth section of the head-note in your book?

A. The difference is that mine does not pretend to be my own writing, but is put in quotation marks to indicate that it is an extract from the opinion of the court, while Freeman's is not distinguished in that manner; purports to be his own writing, and it is not, and by reference to the concluding three lines of the opinion of the court it will be seen that both clauses were taken from the opinion with no other change than the change of the word "this" before "court" to the word "supreme."

Q. Is your note a copy of the whole phrase as it appears in the opinion or as it appears in Mr. Freeman's book?

551 A. As it appears in the opinion, with the necessary modification which any person would be obliged to make in order to insert it in a syllabus.

Q. Those modifications are Mr. Freeman's, are they not, that appear in Mr. Freeman's syllabus?

A. Except that he has not put it into quotation marks.

Q. Then, as I understand you, the only distinction between your copy and Mr. Freeman's is the quotation marks?

A. And the fact that it is the fourth point in my syllabus and the third in his.

Q. With that difference it is a *verbatim* copy of his, is it not?

A. His and mine are both a *verbatim* copy of the same thing.

Q. Turn to page 209, compare the syllabus of your case with the case of Mr. Freeman, and point out the difference.

A. The difference is fundamental, in a legal point of view, inasmuch as mine states a point of law which I think is correct. His states a point of law which I think is false. He says, "The genuineness of a signature cannot be proved on the trial of a cause

552 by comparing it with another signature admitted to be genuine." Now, when signatures of the same party have gone to a jury to judge, by an examination of those admitted to be genuine whether those whose genuineness is disputed are genuine or not, *and* that amounts to proof if the jury find it to have the effect, and therefore I think it is not true to say, as Mr. Freeman says, "The genuineness of a signature cannot be proved on the trial of a cause by comparing it with other signatures admitted to be genuine." But I think it is true, as I say, that all, even experts, can be permitted to prove the genuineness of a signature by comparing it with another signature admitted to be genuine—that is, it is not competent to introduce experts to make a comparison between the two and then to testify their opinion for the instruction of the jury. His syllabus does not relate to the question of the competency of admitting experts to testify at all; my syllabus relates exclusively to that, and in the note to the case, if it is examined, it will
553 be seen that it is proper to draw a line there.

Q. I understand you, then, the difference between your syllabus and his is that you have inserted the words "not even experts?"

A. No; that is not it. Mine relates to the question of the competency of experts to testify; his relates to the competency of the use of one set of signatures by another for comparison by whomsoever the comparison may be made. It is perfectly competent for a court or a jury to make a comparison; it — not competent to examine experts according to that decision. Where the comparison is made by the court or the jury it becomes open to proof, and that was the reason why I preferred my statement of the syllabus, and also for the reason that my statement of the syllabus is more exactly appropriately adapted to express the points contained in the opinion, which relates simply to the examination of experts.

Q. I am not asking which was preferable of the two. I am asking you as to their similarity. Is not Mr. Freeman's syllabus in the exact words of the opinion?

554 A. It contains the words of a fragmentary portion of the opinion without embodying and condensing the sense of the entire opinion. The functions of a reporter differ from that of a judge.

Q. I am not asking you anything about the functions of a reporter. I am asking you whether these words of this syllabus are not in the exact words of the opinion of the court.

A. They are in the exact words of a small portion of the opinion, and fail to catch the meaning of a considerable other portion of the opinion.

Q. Turn to page 243, look at section number four in each your book and the book of Myers & Co., and point out the distinction between the two.

A. Point out the distinction?

Q. Yes; I will ask you, first, to read the syllabus as it appears in the book of Myers, and then read that section of the syllabus as it appears in your book.

A. The first clause?
Q. The fourth.
A. There is no resemblance at all in the first.
Q. I have not asked you anything about the first.
555 A. The fourth of each is it?
Q. Yes.
A. The distinction is that mine——
Q. Will you read the two?
A. Well, I do not like that mode of examination; I do not think it is proper, but I can do so if it is necessary. It is like asking me to act as a porter to carry these books up here; something of that kind. Mine reads: "4. Evidence—false in one, false in all, unless corroborated.—It is error to instruct a jury that if the witness has sworn willfully, knowingly, and falsely in one particular they may disregard his entire testimony. Such instruction should be qualified by the words unless corroborated." Mr. Freeman's reads: "4. Evidence—witness swearing falsely.—It is error to tell the jury if a witness has sworn falsely in one particular his whole testimony must be rejected, for he may in other portions of his testimony be corroborated." The distinction is the fact that Mr. Freeman, by leaving out the words wilfully and knowingly, implies that the instruction given in the circuit court only referred to the subject of swearing falsely;
556 whereas the opinion shows that the instruction in the circuit court was more definite than that. If given as Mr. Freeman's statement indicates it would leave the reader in the dark as to which of — two errors the supreme court intended to correct; whereas as given by me it eliminates one error and thereby makes it certain that the error which the supreme court intended to correct was the failure simply to qualify the instruction by the words "unless corroborated," and not the failure to insert the words "wilfully" and "knowingly," as well as "falsely."

Q. Turn to page 423 of your book and also 423 of Myers' book. Please read the syllabus as it appears in your book and then as it appears in Myers' book.

A. As it appears in mine: "Fees for clerks for services under the act of 16th February, 1865.—Under the above act requiring clerks of county courts to keep indices to their court records, an entry consists of all the items required to be entered in the plaintiff's index or in the defendant's index, thus making two entries in each case, for which the clerk may charge a fee of ten cents. To charge
557 ten cents for each item or fact entered is unlawful." Mr. Freeman's is: "Fees of clerks for keeping indices to their court records—construction of act of 16th February, 1865.—Under the act of 16th February, 1865, requiring the clerks of the circuit court and county courts having common-law jurisdiction to keep indices to their court records, an entry consists of all the various items which are required to be placed in each index, the plaintiff's and defendant's, in any one case, thus making two entries only in each case, one in the plaintiff's index and one in the defendant's, and for each of these entries the clerks may charge a fee of ten cents or twenty cents for the two entries in each case and no more."

Q. Point out the distinction between the two, if you please.

A. Mr. Freeman's is a condensation of an opinion that occupies over four pages into nine lines, while mine is a condensation of the same opinion into less than seven. There is no clause or phrase that I perceive in the two that is alike, the only resemblance being
558 that the same fact is stated in both—in my syllabus in its most condensed form. I do not think any word or phrase in mine *that* could be conveniently omitted. I suppose that no person could write a syllabus on that opinion which would be correct unless it resulted in a statement of the same essential point of law, and the only resemblance that I perceive between these two syllabii is that they state a point of law which is essentially the same.

Q. That is the only similarity you see?

A. I say the only similarity I see in them is that they state a point of law which is essentially the same.

Q. Look at page 522 of volume 38. How many sections is the syllabus divided into in your book?

A. Divided into four in mine.

Q. How many is it divided into in Myers'?

A. Into four in Mr. Freeman's.

Q. Please read the fourth section as it appears in yours and the fourth section as it appears in his, first giving the catch-line of each.

A. In Mr. Freeman's: "Evidence to justify a recovery.—To justify a recovery, however, against the personal representatives of
559 the husband upon such a claim it must be made to appear that the estate of the husband was possessed of the specific articles at his death or their value in other property or money." My fourth clause reads: "Evidence needed for recovery.—To justify a recovery, however, against the relatives of the deceased husband the record must show that the deceased was possessed of the specific articles at his death for whose value the judgment is rendered or of their value in money or other property."

Q. Now, please point out the distinction between those two.

A. Well, the difference is principally one of choice of language and correct expression. I consider it a much more correct expression to say that the deceased was possessed of the specific articles than to say that the estate of the husband was possessed of the specific articles, for the reason that when a man is deceased he is no longer a husband, and while he is a husband he has no estate.

Q. Then I understand you to say the difference consists in
560 your putting Mr. Freeman's syllabus into better language?

A. I think that the difference consists in the fact that upon the examination of the opinion I stated the point according to my mode of writing the king's English and not according to Mr. Freeman's mode.

Q. That is the only way that you can account for the similarity of the two, is it? That might account for the difference, but how do you account for the similarity?

A. I account for the similarity from the fact that they are both a statement from the opinion or pretty nearly the same point of fact.

Q. That is the only explanation that you can give of it, is it?

A. Yes, sir.

Q. Now, I will ask you to turn to page 226 of the same volume. Please read sections numbers 3 and 4 of Mr. Freeman's syllabus of that case; then read section number 3 of your syllabus.

A. Sections third and fourth read: "Same description of premises.—When the premises can be found and located by the de-
561 scription given in the declaration that is sufficient. 4. So it is enough to describe the land by the part of the quarter section, section, township, range, and meridian." Mine reads: "3. Same description of land.—It is sufficient to describe the land by the part of the quarter section, the section, township, range, and meridian, so that the premises can be found from the description."

Q. Now read section 7 of Mr. Freeman's and section 5 of yours.

A. 7 of Freeman's reads thus: "Writ of possession—motion to quash.—If the writ of possession is defective a motion to quash it may be made in the court below before its insufficiency can be assigned as error." Mine reads: "Same on writ of possession, ditto.—So if the writ of possession is defective a motion to quash it must be made in the court below before its insufficiency can be assigned as error."

Q. Point out the difference, if you please, between those—the verbal difference.

A. Both are condensations of the following language from the opinion: "We shall not examine whether the writ of posses-
562 sion sufficiently describes the property, inasmuch as that question is not before us. If defective the remedy is by motion of the court to which it issued to have it quashed. Such motion does not seem to have been made, and until that is done its sufficiency cannot be assigned for error in this court." So far as sections 3 and 4 are concerned, it is improved if the same point is stated in half the number of words, and it is an originality if it is stated in totally different language. So far as sections 5 in mine and 7 in his are concerned, the language is not entirely identical, but no two persons following and stating the point with which the opinion concludes could correctly state that point substantially as the court states it without using language that would bear a remote but considerable resemblance.

Q. I think you must have misunderstood my question. I asked you to point out the verbal differences between the two.

A. Well, the verbal differences are that his is headed: "7.
563 "Writ of possession, motion to quash." Mine is headed, "Same," referring to the word "error" in the preceding heads: "Same on writ of possession, ditto," the word "ditto" referring to the clause above, "must first be presented below;" so that my catch-line in full reads: "Error on writ of possession must first be presented below." His reads: "Writ of possession, motion to quash." The remainder of the language is taken in both cases from two sentences of the opinion condensed: "So if a writ of possession is defective motion to quash it must be made in the court below before its insufficiency can be assigned as error."

Q. I have not asked you where it was taken from; I asked for the difference between the two syllabuses.

A. Well, the language is identical, except in the use of the word "so."

Q. The difference between the two is that you have inserted the word "so," is it not?

A. I have used the word "so."

Q. Please turn over to the next case, page 228. Read section 3 of the section of Mr. Freeman, and then read section 2 of your syllabus, and then point out the verbal differences between the two.

564 A. This reads: "3. Parties in suit on replevin bond.—The obligee on replevin bond may bring suit upon it, in the name of the sheriff, for his use." Mine reads: "2. Same parties to suit.—The obligee in the replevin bond may sue, in the name of the sheriff, to his use." The sentence of the opinion reads——

Q. No; point out now the verbal difference between the two.

A. Well, is there any objection to my stating the sentence of the opinion?

Q. There is an objection to your stating anything except to answer the question.

Solicitor for defendants states that he desires the witness to make any explanation which he may desire in giving his answers as he proceeds.

A. The clause of the opinion is: "The bond is given not only for the protection of the sheriff, but also for that of the defendant, and the latter can bring suit upon it, in the name of the sheriff, for his own use;" together—being the sentence immediately above it—

565 "If the plaintiff fails to do this he is liable to an action, notwithstanding he may have kept the sheriff harmless and made return of the property as averred in his plea."

Q. (Question repeated.)

A. The sentence is essentially the same and can be found duplicated probably millions of times in the various law books throughout the world.

Q. Do I understand you to say, then, there is no difference between the syllabus of Freeman and the syllabus prepared by you, and that you cannot point out any?

A. No, sir; I do not say anything of the kind; the syllabus varies very essentially, from the fact that his has four clauses and mine has two.

Q. The question is confined to the particular section number 3 in Myers and number 2 in yours?

A. The English language is so limited in its vocabulary that a fact or point of law desiring to be stated cannot be stated in any different language than that which is used in the opinion in

566 Mr. Freeman's syllabus and in my syllabus, the mere differences being such slight differences in relation to propositions as occur between these three statements of the same point.

Q. Is that your whole answer?

A. Yes. If two persons have the same thing to say they are very

likely to say it in very much the same language; there is not that kind of semblance which indicates the use of the scissors which you will find between the case that I referred to in Myers' Digest and in Abbot's Digest. If you want the exact difference in this clause I will say I say "Replevin bond, parties to suit on." He says, "Parties in suit on replevin bond." I say, "Obligee in replevin bond." He says, "Obligee of a replevin bond." I say, "May sue in the name of the sheriff." He says, "May bring suit upon it in the name of the sheriff." I say, "To his use." He says, "For his use." The court says, "For his own use." The whole of the balance of the syllabus appears to be totally dissimilar in general arrangement and construction.

567 Q. Turn to page 534, read section 6 as appears in Myers' book, and *and* section 3 as it appears in your book, and point out the difference.

A. Mr. Freeman's syllabus reads: "6. When money becomes due on a sale of property the purchase-money becomes due upon the delivery of the property to the purchaser when no time is specified for the payment, and this rule applies as well to the sale of real estate as to that of personal property." Mine reads: "3. Same," meaning "conveyances." Purchase-money—when presumed to be due.—A sale of real estate is no exception to the general implication which the law raises that when property is sold and no time is specified for the payment the money is due, and the delivery of the property sold is made to the purchaser.

Q. Now, won't you read section 4 of Myers' and 6 of yours?

A. I would state, in relation to that last syllabus, that the idea conveyed seems to me to be essentially different. His purports to be a statement of a rule of "law as" to when money becomes due; mine is the statement of a presumption, which may be a disputable one.

568 Q. You will observe I have not asked you to give the substance; my questions are confined to verbal differences in the similarity.

A. I only give them for my own benefit.

Mr. *Mr.* LE MOYN: I object to your attempt to make any argument on the subject or explaining in your answers to my questions. We have to wait a good while for your answers and we take too much time.

Solicitor for defendants states to the witness that he is at liberty, after answering each question, to make any explanations that he may desire.

By Mr. LE MOYN:

Q. I ask you to read number 4 of Myers' and number 6 of yours and specify the verbal differences.

A. Myers' reads: "4. Parole evidence—acknowledgment of the receipt of the consideration in a deed acknowledgment.—In a deed of conveyance of land *of* the receipt of the purchase-money is but a receipt for money, and is subject to be contradicted, explained, or

varied." "Mine" reads: "6. Parole evidence contradicting the consideration in a deed.—The acknowledgment in a deed of conveyance of land of the receipt of the purchase-money is a mere receipt,
569 and parole proof that the money was not in fact paid is, as a rule, admissable." His states no rule of law at all, because by inserting the words "extrinsic evidence" he makes the statement apply to any other instrument of evidence than a deed which contains an acknowledgment of receipt. Of course there is no difficulty and never has been about contradicting one instrument under seal by the use of another contemporaneous instrument under seal; the only question is as to the circumstances under which an instrument under seal can be contradicted by parole, and his term "extrinsic evidence" would apply just as well to an extrinsic instrument under seal as to the extrinsic testimony of a witness. It is not stating a rule of law at all to say that a receipt can be contradicted by extrinsic evidence, for the extrinsic evidence may consist of any other acknowledgment, like a receipt stating that the money was not paid.

Q. Was not the rule of law as stated by Mr. Freeman in the exact words of the opinion of the court?

A. Very likely; it may be in the words of a portion of the
570 opinion. I have not examined it.

Q. I will ask you now to state the verbal distinction between this section of the syllabus in your book and in Mr. Freeman's?

A. I will explain as to this other point, as to the opinion of the court. The opinion shows that the evidence which was introduced was the oral testimony of the scrivener who drew the deed; and, that being the case, the point decided by the court did not relate to the introduction of extrinsic sealed or even written evidence, but to the introduction of parole evidence, and it was the duty of the reporter so to state, whether the court had put it in that form in its opinion or not, as the duty of a reporter is to state the point decided and not to merely copy the language of the court.

Q. I will ask you now to turn to page 528; read the last section of the syllabus in Mr. Freeman's book and then yours, pointing out the verbal differences between the two.

A. It would be more difficult to define the resemblance between these two clauses than it would be to define the difference.

Q. Please read them first.

571 A. His reads: "Transcript of record on change of venue—its requisite." Mine reads: "Change of venue—what essential." For the catch line his reads: "Although the entry of the proceeding in court from which a cause is removed on change of venue may not be quite in the ordinary form and somewhat resemble a clerk's certificate of what appears from the record, yet if the proper clerk certifies the transcript to be a full, true, and perfect transcript of his records it should be accepted as such."

Q. Now read yours, please.

A. Mine reads: "If the proper clerk certifies the transcript to be a full, true, and perfect transcript of his records it will be accepted as

such by the court trying the cause, although the entry of the proceedings in the court from which the cause is removed may not be quite in ordinary form." Both are derived from and are condensations in different language of the last page of the opinion.

Q. Point out the verbal differences between the two.

A. The verbal differences are that his begins by saying: "Although the entry of proceedings in the court from which a cause is
572 removed." Mine begins by saying: "If the proper clerk certifies the transcript to be a full, true, and perfect transcript of his records." He then proceeds, "on change of venue may not be quite in the ordinary form and somewhat resemble the clerk's certificate of what appears from his record;" mine proceeds, "it will be accepted as such by the court trying the cause, although the entry of the proceedings in the court from which a cause is removed may not be quite the ordinary form;" and his includes, "yet if the proper clerk certifies the transcript to be a full, true, and peofect transcript of his records it will be accepted as such." The resemblance is the same that there would be between reading the Lord's prayer backwards and reading the Sermon on the Mount forwards.

Q. You think the similarity is about the same?

A. Yes, sir.

Q. Now, let me call your attention to the first sentence in you syllabus: "If the proper clerk certifies the transcript to be a full, true, and perfect transcript of his records it will be accepted as
573 such." Is not that identical sentence in the latter part of Mr. Freeman's syllabus?

A. Pretty nearly, not identically, but both are taken from a sentence in the opinion.

Q. I am not asking where they are taken from. I am asking you if the same words are not in both. Now you say: "Although the entry in the proceedings in the court from which the cause is removed may not be quite in the ordinary form." Is not that identical sentence the beginning of Mr. Freeman's syllabus?

A. Not identically.

Q. Point out the difference.

A. Mr. Freeman's contains the words "on change of venue;" mine does not.

Q. Any other?

A. Well, there are other slight verbal differences.

Q. Is not your syllabus made up by taking Mr. Freeman's last syllabus and putting it first in yours and taking his first syllabus and putting it last, and leaving out a few intermediate words? If that is not the whole difference, point out any other.

A. Do you mean in the last clause?

Q. Yes.

A. No.

574 Q. The two sentences of this clause of his syllabus are thus transposed, are they not?

A. Well, he gets into his syllabus pretty near the same fact as I do, and he gets it from the same source.

Q. That is not my question. Is not the last syllabul of this clause of his syllabus made the first paragraph of your syllabus?

A. No, sir. There are such verbal differences as to indicate that we were merely seeking the same matter from the opinion.

Q. I have asked you to point out those differences. Is not his last sentence your first one? If not, point out the difference.

A. Both are variations of the sentence, "The entry is not quite in the ordinary form, and somewhat resembles a clerk's certificate of what appears upon his records, but the clerk of Hamilton county certifies that it is a full, true, and perfect transcript of his records, and we must accept it as such.

By Mr. HIGH:

Q. That sentence you have just read from the opinion of the court?

575 A. That sentence I have just read from the opinion of the court. Every word contained in Mr. Freeman's syllabus, so far as I see, is taken from one or the other of two or three sentences toward the close of the court's opinion, and I don't think that any person could state the point decided by the court and wholly avoid the use in any order of arrangement of any part of the language of the court, and if Mr. Freeman uses any part of the language of the court and I also use any part of the language of the court, then the part of the language of the court which I use and the part of the language of the court which Mr. Freeman uses will be copies of each other as far as they go, but the general literary arrangement and construction of the two syllabuses is as different in style as the work of two different writers who are stating the same fact or condensing the same statement of fact could well be.

By Mr. LE MOYNE: For fear you do not comprehend the question I will ask the reporter to read it to you.

Question read by reporter.

576 Q. Do you comprehend my question? It is: Is not the last sentence of this section of Mr. Freeman's syllabus the same as the first sentence of yours? If not, point out the difference between the two sentences—the verbal differences.

A. Do you comprehend the answer that I have given to your question? If not, point out where it is deficient.

Q. It does not state whether the two sentences are verbally the same, which is the sole question I have asked.

A. The two extracts that you are referring to are not sentences; you have not asked me as to any two sentences whether they are the same.

Q. I will read the two sentences. If I read them incorrectly you will specify the incorrectness.

A. Nothing will be a sentence unless it includes the whole of my syllabus.

Q. I read from the syllabus of Mr. Freeman: Yet if the proper clerk certifies the transcript to be a full, true, and perfect transcript of his records it should be accepted as such. I read now from your

syllabus: "If the proper clerk certifies the transcript to be a full, true, and perfect transcript of his records it will be accepted as such."

577 A. The variations are in the use by Mr. Freeman of the words "it should" where the court used the words "we must" before the words "accept it as such," and I use the words "it will be accepted as such." The words "certifies it," meaning the transcript, "to be a full, true, and perfect transcript of his records" come from the opinion with a slightly different head and a slightly different tail attached to it by Mr. Freeman and by myself, but the body being essentially identical with the language of Mr. Justice Lawrence, to whom, if anybody, the sentence belongs.

Q. You consider, then, there is a difference between your statement of the point and Mr. Freeman's?

A. In the first place, you have not in your opinion embodied the statement of the point, but only a phrase or clause which goes to make up a part of the statement of the point your question implies. By not including the entire statement of the point *that* you cannot put the question whether the statement of the point is the same with the expectation of having it answered in the affirmative.

578 Inasmuch as you know that the statement of the point is not the same, you therefore select a clause containing certain disjointed—by themselves, meaningless—words and ask me if they are not the same, and I say this extracted clause exists in the language of Mr. Justice Lawrence in the opinion, and that Mr. Freeman has given it one head and tail and I have given it another, and that with that degree of amendment the court's language has passed into both syllabuses, and whatever degree of resemblance or difference there is is apparent to every person who reads the syllabus, and as plain as can be.

Q. Do you mean to swear, then, that you copied this portion of the syllabus from the opinion of the court?

A. I have not a doubt in relation to it.

Q. That you did?

A. Yes, sir; that I obtained it from the opinion of the court.

Q. And you think there is such a change from Mr. Freeman's syllabus as you were authorized to make?

579 A. No, sir; I do not think there is any change from Mr. Freeman's syllabus at all.

Q. You think it is the same, then, do you?

A. No, sir; I do not think it stands in any relation to Mr. Freeman's syllabus.

Q. You do not think it is either different or the same?

A. It is not a change from Mr. Freeman's syllabus any more than I am changed from you because we are not alike—because the materials that were used in making you up were not used in making me up; therefore it is not proper to say that I am a change from you because we are unlike; so it is not proper to endeavor to put into my answer the question or the statement that mine is a change from Mr. Freeman's syllabus.

Q. You stated in your former testimony that in making these books you undertook to prepare a new syllabus for each case?

A. Yes.

Q. And you stated that the object of making that was in order that there might be a new book made—a change made in the syllabus?

580 A. I did not say anything about a change in the syllabus. I spoke of constructing a new book and new syllabuses, except as to the opinion.

Q. I understood you to testify that you and the Callaghans in talking it over agreed that the syllabus was to be changed?

A. No, sir; that word "change" was the word that you undertook to insert into my testimony and did not succeed in getting it in.

Q. What did you say it was you said—there was to be a new syllabus, did you not?

A. I repudiated the use of the word "change" when it was first used in your question.

Q. Now, you were to have a different syllabus?

A. Yes.

Q. And the difference in the syllabus, as I understood you to swear, was for the purpose of having a new book, to avoid the use of what Mr. Freeman had done. Was that not what you stated to be the object of making the syllabus, and was not that the object?

A. Yes; the object was to construct a new book.

Q. It was to avoid the use of Mr. Freeman's, was it not?

581 A. Not more to avoid the use of Mr. Freeman's than to avoid the use of Mr. Abbott's or that of any other man that had made a book.

Q. I am speaking of this particular law book. In making this particular book what was the object in making new syllabuses?

A. The object was to state the point decided in the opinion.

Q. Why not use the syllabus as made by Mr. Freeman?

A. Because there was no necessity for it.

Q. I understood you to say before that the reason was to have a new syllabus; to have different syllabuses. Was that true or not?

A. If you mean by the reason, the motive *the motive* was to construct a new book for that purpose. The opinions being public property, we took those and combined with them such a syllabus as an independent and original writer working on the opinion in the same manner as Mr. Freeman did would construct, without regard to any manner in which Mr. Freeman may have constructed his syllabus in the main without any necessary regard to it. It was

582 simply to construct a new and independent syllabus, just as any person undertaking to make a digest, for instance, of the Illinois Reports would get his syllabus from whence he chose the opinions, being the original source.

Q. Do you mean to say no effort was made on your part to avoid taking Mr. Freeman's syllabus?

A. I examined his style of writing a syllabus sufficiently to satisfy me that both the matter used and the mode of arriving at it could with profit and advantage to this series of works be avoided. His

system was to cut the syllabus out of the opinion with the scissors in the main, and I preferred my own conclusions as to what the point decided in the case was and then to write the syllabus, generally using very little indeed of the language of the court, but once in awhile allowing a phrase or so to run in, and that was precisely the reverse of the system according to which Mr. Freeman worked,

583 but incidentally in exceptional instances a few of the phrases of the court would run into mine and into his. In the main they are as unlike as any two sets of syllabuses can well be, for the reason that they are constructed in a different manner and and on a different system.

Q. When you get through your argument I will ask you to answer the question that has been asked you. Read the question, Mr. Reporter.

Question read by reporter.

A. I mean to say that calling my answer an argument does not lessen its completeness or value as an answer.

Q. Is that all the answer you have to make to that question?

A. There was a deliberate choice of a different mode of arriving at a syllabus, if it would be proper to call that avoiding the taking of Mr. Freeman's syllabus. I simply constructed the syllabus without any more regard to Mr. Freeman's than I had to Mr. Abbott's in his Digest of the United States Reports or any syllabus that might have been accessible.

584 Q. Do I understand from this answer, then, that you did not make any effort to avoid taking syllabus? You had it before you, had you not?

A. I think that that question is fully answered. I do not think it is right of counsel to compel a witness to inject his thoughts through the counsel's quill or to phrase them exactly in language containing his innuendoes and susceptibilities of construction.

Q. You have answered this question, then, as fully as you can, have you?

A. Yes.

Q. Then I will ask you the question what you referred to in your affidavit when you said you took elaborate and careful pains not to use any material furnished by Mr. Freeman or peculiar to said Myers & Co.'s edition of said volumes. To what did you refer in that affidavit which you took elaborate and careful pains not to use?

A. It is taking elaborate and careful pains not to use his syllabus; to sit down and deliberately read the opinion and study the questions involved and write a new and distinct syllabus. That is taking the most elaborate and careful pains that a man can take to avoid the use of his syllabus.

585 Q. Do you know what matter in the books of Mr. Freeman you referred to in that affidavit? If so, specify.

A. I think the affidavit speaks for itself; it is quite comprehensive.

Q. No; the affidavit says "not to use any materials furnished by Mr. Freeman or peculiar to said Myers & Co.'s edition of said volumes."

A. Yes, sir.

Q. Now, specify what the materials were, or specify any of the materials which you referred to in that affidavit that you had taken elaborate and careful pains not to use.

A. Well, the syllabus as much as any. The idea was that the work was to be done from the information supplied by the opinion.

Q. Then you mean to swear now, do you, that you took elaborate and careful pains not to use Mr. Freeman's syllabus; is that what you mean? If not, state your meaning.

A. I think I have stated it fully.

Q. Is that what you mean?

A. If it is taking elaborate and careful pains not to use Mr. Freeman's matter to do the work in the manner I have described, then I took elaborate and careful pains not to use his matter.

586 I adopted the method of studying the opinion and deriving my conclusions as to the point decided from that study of my own.

Q. The words "elaborate and careful pains" I have taken from your affidavit and I am asking you to what you intended to apply them. Were there any other materials which you took elaborate and careful pains not to use from Myers' book? If so, state what such materials were.

A. Any other materials than what?

Q. Than the syllabus.

A. I think that the affidavit states broadly in relation to all the matter that Mr. Freeman may have contributed to the book as much in relation to one clause as to another.

Q. (Handing witness copy of affidavit.) Look at the affidavit and now state what other materials beside the syllabus you referred to in that affidavit that you had taken elaborate and careful pains not to use.

A. I think the affidavit contains in its next clause an explanation of the phrase "elaborate and careful pains not to use any materials furnished by Mr. Freeman," and it means essentially what it

587 would have meant if had said in other words to derive all the necessary information concerning such work from the opinions of the court. The words "to derive all necessary information concerning such work from the opinions of the court" I regard it as conveying the same idea as "elaborate and careful pains not to use any materials furnished by Mr. Freeman."

Q. Do I understand you, then, that the allegation in the affidavit was intended by you and does assert that you used nothing from Mr. Freeman's book except the opinions of the court?

A. The affidavit must speak for itself as to what it asserts.

Q. You cannot determine?

A. I do not see anything to explain.

Q. I have been asking you and am trying to ascertain from you what materials you referred to as peculiar to Myers & Co.'s edition and what materials you took pains to avoid using, and I am asking you to specify what the materials were in Myers' book that you took pains to avoid?

A. In matters in the statements of fact that were not contained in the opinion or were not of a documentary nature and the syllabuses or such portions of the syllabuses as were not extracts
588 from the opinion I did not think it necessary to see before allowing any language of the court to creep into my syllabus; to see that it had not been used by Freeman; it was immaterial to me, but in my mode of writing the syllabus I used very little of the language of the court, anyway. Those occasions would be very rare.

Q. The question I am now asking is what other materials than the syllabus there were in Freeman's book that you took elaborate and careful pains not to use.

A. Well, I have answered you fully.

Q. Then I understand you to say that you took elaborate and careful pains not to use any sttatements of fact not contained in the opinion; if I am not correct in this please state how it was.

A. The affidavit seems to me to be clear in itself. I do not see that I can make it any clearer.

Q. You can answer my questions, can you not?

A. You are asking me as to what I swore to in the affidavit.

Q. I am asking you what materials were referred to in that affidavit.

589 A. I mean by the words "statements of fact" that which Mr. Freeman entitles statements of fact—that is, the reporter's statement of the facts of the case; with this explanation I would say yes, if I correctly understand the question.

Q. State whether the arguments of counsel, as included in Mr. Freeman's books, also constituted part of the materials which — took elaborate and careful pains not to use.

A. Not to use the literary form in which Mr. Freeman had condensed or copied the briefs of counsel from the records; but if Mr. Freeman copied, in certain instances, four or five pages of a brief, and the fact exhibited by the four or five pages could be stated in a few lines, I did not consider that if there were a copyright outstanding in a book at all that copyright would extend to a mere fact intirely apart from its mode of statement or the language used in stating it, and I conceived, whether rightly or wrongly, as a principle of the law of copyright, that a fact was not copyrightable, whoever had stated it, and that an abridgement was not an infringement.

Q. The arguments of counsel was part of the material of Mr. Freeman's book, was it not?

590 A. I think so; in some cases I think that he copied some things.

Q. They were not contained in the opinions of the court, were they?

A. Sometimes they were, sometimes they were not. The opinions of the court are very likely to be written up on the brief.

Q. When the arguments of counsel were not included in the opinion of the court would not that be part of the materials furnished by Mr. Freeman?

A. The materials furnished by Mr. Freeman are furnished in given language and form.

Q. I am not asking the form of the material; I am asking whether this material was not furnished by Mr. Freeman's book.

A. The fact is to be distinguished from the composition. I have a right to all the facts that there are in all the books in the world, no matter who has a copyright on the language.

Q. I don't propose to discuss that with you; I merely ask whether Freeman furnished those materials or not?

A. I am only trying to draw a distinction between the materials Mr. Freeman furnished and the materials which I took. The
591 materials which Freeman furnished consisted of language. The materials which I took consisted of facts embodied in totally different language.

Q. Where did you take your facts from?

A. My impression is that in some instances, though I would not be certain, I stated a use of authorities by counsel which may or may not have appeared in the opinion also, but which did appear in the brief printed in Mr. Freeman's report.

Q. Was not that part of the material furnished by Mr. Freeman and peculiar to his edition?

A. No, sir.

Q. What other book do you find it in or did you find it in?

A. The fact as written up by me was a different piece of literary composition from the fact as cut, by Mr. Freeman, out of his briefs.

A. I am asking where you got the materials for your literary composition; that is the question.

A. Well, I am endeavoring to follow your line of examination as closely as I am able.

Q. From whence did you derive the materials for your literary composition?

592 A. Some of them I derived from some fifteen or eighteen years of practice in the law and also in the work of literary composition.

Q. I am confining my question—intending to confine it—solely now to the arguments of counsel contained in your book.

A. When you ask a man where he derives the materials for his literary composition you are not confining yourself to anything. You are extending your question to all the materials which he may embody in his literary composition; that includes his entire experience and practice as a writer and his study as a lawyer.

Q. You will understand hereafter that all my questions apply to these books.

A. Well, they must be reduced to language, then, that will relate to nothing else.

Q. Whenever you are in doubt about it and will ask I will correct the question. Where did you get the materials for the arguments of counsel that you put into your book?

A. The materials for my statements of fact consist of my own literary style, my own judgment and knowledge as a lawyer
593 in the matter of selection, and my own faculty of condensation and arrangement, which, if any matter from briefs of

counsel appears in volumes 37 and 38, are applied to the condensation and arrangement of that matter from the mode in which it is stated in Freeman's extract from the briefs of counsel. In other words, I did not see the original briefs from which these extracts were taken.

Q. Then I understand that the arguments of counsel were not part of the materials which you took careful pains not to use the arguments of counsel as furnished by Mr. Freeman?

A. Yes, sir; as furnished by Mr. Freeman.

Q. Was not — part of the material which you took elaborate and careful pains not to use?

A. I took careful and elaborate pains not to use them as furnished by Mr. Freeman.

Q. The elaborate and careful pains not to use consisted, then, in your avoiding the use in the form that he had used them; was that what you meant?

A. If I used any material in those forms from the brief——

Q. Do you not know whether you did or not?

594 A. Well, I would not be positive. It was by condensing so as to retain the authorities without any of the language of Mr. Freeman, as nearly as I remember, without any of the original language of the brief.

Q. Now, state whether the instructions given by the court below were published by Mr. Freeman in his book with the cases; whether that constituted part of the materials peculiar to Myers & Co. which you took elaborate and careful pains to avoid.

A. No; I took elaborate and careful pains to use those.

Q. Was not that peculiar to Mr. Freeman's edition? Is there any other book that contains all these instructions?

A. The instructions were not matters of Mr. Freeman's literary composition.

Q. But was it not peculiar to his book, the publication of those instructions together with the cases. If not, if there is any other book that has those, just state what it is.

A. Well, they are made public by being put upon the record, and they are accessible to anybody who will go down there and examine them. Mr. Freeman's work is not made public by being put upon the record, but the instructions *are* become public property by being filed and recorded.

595 Q. How was it about the table of cases; was that peculiar to Mr. Freeman's edition?

A. I don't think that in either of these cases I sent the table of cases to the printer.

Q. You did not prepare the table of cases?

A. I did not prepare it at all.

Q. Did you read the proof of it?

A. No, sir.

Q. I understood you to say in your direct examination that you prepared the whole book—everything but the printing—and read the proof. Was that correct or not?

A. Well, I do not think that I saw the title page or the table of cases or the endorsement of entry in the clerk's office or the list of judges—two or three of those things that precede.

Q. All the other matter you furnished?

A. Yes, sir; beginning with the page where the cases begin.

Q. Who furnished the other matter?

A. I don't know.

Q. You never knew?

A. Well, I assumed that it was furnished from the office of —; that is a mere assumption.

At this point the examination was suspended until two o'clock p. m.

596 MONDAY, *January* 13, 1879—2 p. m.

Met pursuant to adjournment.

Present: Same as before.

Cross-examination — VAN BUREN B. DENSLOW resumed by Mr. LE MOYNE:

Q. Turn to page 125 in your book, volume 37, and compare it with the statement of facts contained in Freeman's, commencing with the words, "On the hearing the court below decreed." State what the difference is between the statement of facts as contained in your book and that contained in Mr. Freeman's, embraced in the 11 last lines of the 130th page.

A. Did you ask me for the difference between them?

Q. Yes; state the difference between the statements contained in one and the other.

A. The difference is that Mr. Freeman's statements, by their punctuation, *then* in their language, are presented as being a copy of the decree *verbatim*, so far as they go, and my statement is somewhat briefer, with some typographical corrections of certain misprints that seem to exist in Freeman'-, and my statement
597 does not purport to be a copy of the decree or any portion of it. Freeman says, "A hearing was had in the court below on the bill, answer, replications, and proofs, and the court decreed;" whereupon he puts a colon, and then gives three separate clauses of the decree, each beginning with "That," in a manner to indicate that what he is now giving is the language of the decree; if not literally, it is essentially, the language of the decree. Mine is all in one clause, or, I should say, all in one paragraph, instead of three. I say, "On the hearing of the court below, decreed," and my statement is made up by — from other sources than this statement. I presume from the opinion—he says, "That the assignment from Q. A. Wightman to Albert Clapp of the ten notes made by Frederick Johnson for $200 each, dated December 1st, 1861." I say, "That the assignment from Q. A. Wightman to Albert Clapp of certain notes of Johnson's, secured by mortgage on the schooner Palmetto;" then he says, "Secured by mortgage on the schooner Palmetto; and also two
598 notes made by Frederick Raehler and Charles Raehler for $500 each, secured by mortgage on the schooner Argo." I

say, "Also of certain other notes of F. P. Raehler and Charles R. Raehler," instead of "Frederick Raehler and Charles Raehler, for $500 each." I leave out the sum "secured by mortgage on the schooner Argo;" and he says, "Bearing date January 18, 1862, is fraudulent and void." I omit the dates and use the words "fraudulent and void." He says that the injunction against the said defendant is made perpetual. That is omitted. "That Frederick P. Raehler, Charles R. Raehler, and Frederick Johnson pay to the clerk of this court the principal and interest due on said notes, up to the date of service of garnishee process on them." I say, "And that said Johnson and Raehler pay the said notes to the clerk of the court, to be applied on plaintiffs' judgment." He then says, "That A. Clapp and M. Blanchard discharged said notes and mortgages and deliver them to the makers, and in default thereof the clerk shall deliver a copy of this decree to the makers, which shall be a discharge of said notes," etc. I say, "And A. Clapp and
599 M. Blanchard discharged said notes, or that in default thereof the clerk of this court shall deliver a copy of this decree to the makers thereof, which shall be a discharge." He then says, "That the clerk shall pay to complainant on said judgment his *pro rata* portion of said monies; that complainant recover of C. W. Clapp and Albert Clapp his costs." That, I believe, is not included in my statement. Mr. Freeman's statement occupies, I believe, 24 lines and mine 11. Did your question relate to any further portion of the statement?

Q. State whether in your book the assignment of errors are not all copied from Freeman's book in that case and copied *verbatim?*

A. Yes; the portion relating to the assignment of errors, which I regard as belonging to Freeman, is the clause, "To reverse that decree the defendants bring the cause to this court by writ of error and assign a number of errors." The actual assignment of the errors, I assume, his statement being correct, is on record, filed by the attorneys in the case, or rather endorsed on the record, and is not private property.

600 Q. You consider the heading, then, how the case was brought to the supreme court or the statement of that as belonging to Mr. Freeman?

A. The language in which it is stated belongs to him.

Q. But the information contained below you do not consider he had any right to?

A. The fact belongs to the world.

Q. Did you answer the question as to whether you had copied the others assigned from his book?

A. Yes; I presume, without comparing them. I presume that they are identical. I would say, in justice to my own view of the matter, that if a brief is on record at Ottawa and Mr. Freeman has copied it in whole or in part in any book of his I do not conceive that it interferes with the right of any other person to go to Ottawa and copy it in a book of his, and that the right to print it belongs to every person, notwithstanding it has once been printed. Then the use of Mr. Freeman's book as the medium of getting the copy from

Ottawa does not in any way effect the question of copyright. That depends upon the result and upon the means. In other words, if I have a right to have the matter telegraphed from Ottawa for the purpose of printing them I have the right to take it where I
601 can find it and print it.

Q. Turn to page 99 of your book—the same volume 37—and state how much of the statement introductory to the opinion is copied from the book of Mr. Myers as made by Freeman.

A. I think that the contract is copied and one instruction and the balance of the statement of fact is condensed.

Q. From whence did you get all those materials incorporated in the preliminary statement from the beginning of the case to the opinion of the court?

A. Well, I think the statements of fact probably are duplicated in the main in the opinion and in Mr. Freeman's book both. I do not observe any differences at present but what are contained in both, although they are set forth in nearly the same form in Freeman's statement of fact and in the opinion—that is, Mr. Freeman's statement and the opinion of the court both contain essentially the same statement of fact.

Q. The question is from whence you derived the materials contained in this preliminary statement as published in your book?

602 A. If you mean by the materials the words published by me, I derived them from my own vocabulary. If you mean the facts on information conveyed in those words, I derived them from Mr. Freeman's statement of fact and the contract of opinion and opinion.

Q. Where did you derive the information as to the court below, where this case was tried?

A. That it was an appeal from the circuit court of Cook county?

Q. Yes.

A. That I derived from Mr. Freeman's book.

Q. Where did you derive the information as to names of the attorneys who appeared for the different parties in the supreme court?

A. That is in all cases derived from Mr. Freeman's book.

Q. Is not that inserted in your book at the head of each case, the name of the judge below, and also the counsel that appear in the supreme court, and was not such information taken entirely from Mr. Freeman's book?

A. Yes, sir; that is information that is accessible on the record.

Q. I understand you to say, then, that this preliminary statement was taken from Mr. Freeman's statement—the preliminary
603 statement made by you in this case was taken from Mr. Freeman's statement?

A. In part, I think.

Q. Had you any other source from which you derived any portion of the material incorporated in your statement?

A. I did not go to the record for it. I got it all from the opinion or in the statement of fact.

Q. Can you find anything in the opinion there that gives the form of action, or is that only contained in Mr. Freeman's statement? I refer to the case of Winne *vs.* Hammond.

A. Well, it speaks, towards the close of the 104th page: "Gives him a right to sue for and recover it if legally disposs-ed or to maintain trespass for injury. It may be sustained by a wrong-door precisely as if he were the general owner; nor can a tort-feasor question his title that indicates——

Q. The form of action is stated, however, in Mr. Freeman's statement of fact?

A. Yes, sir.

Q. And repeated in yours, is it not?

A. Yes, sir; that would have been so if I had gone to the records.

Q. Have you any knowledge on that subject, except derived from Mr. Freeman's book? Confine your answer to the case in question.

604 A. Knowledge on what subject?

Q. As to what the records show.

A. As to what the record shows in that case?

Q. Of course.

A. I do not learn from Mr. Freeman's book what the record shows. I only learned from that what his book shows.

Q. My question is as to whether you ascertained that the record showed the form of action from Mr. Freeman's book, or in any other way had you any other knowledge what the record showed in this statement of fact, except what you got from Freeman's book?

A. No, sir; but I say that if I had gone to the record I would have got the same facts.

Q. How do you know that?

A. Because in the examination of a great many records and a comparison of them with Mr. Freeman's various books satisfied me that while there might be inaccuracies in other respects there would be almost an impossibility of a mistake in the statement of the form of action, so if I had gone to the record I would have found out it was an action of trespass and so stated it.

Q. Turn to page 287 of your book volume 37 and state how
605 many pages following 287 are copied from the book of Mr. Freeman.

A. Beginning at the words, "The following instructions were given to the jury on the part of the plaintiff," about six pages and a half of instructions and statements from the case from the bill of exceptions are contained in Mr. Freeman's book, and are copied as parts of the record into mine on the principal stated in my previous examination.

Q. Page 292—have you not copied *verbatim* from Freeman's: "These were all the instructions given in the case for plaintiff or defendant;" also "The defendant asked the court to give the following instructions, which were refused?"

A. Well, from my knowledge of the mode in which these statements are made up, I would say that Mr. Freemen cut the entire statement out of the printed abstract of the record——

Q. I object to that. I am asking you if you merely copied into your book that part, and I ask you to confine your answer to that.

A. The statement is alike in my book and in his.

Q. Then you took it from his book, did you not?

A. Yes, sir.

606 Q. Then why do you object to saying you copied it from his book?

A. Because I did not regard it as Mr. Freeman's statement.

Q. I did not ask whose statement it was. I asked you from whence you got it; from whence you copied it?

A. In the same sense as the opinion?

Q. I ask from whence you copied it?

A. I am not telling you about the source, but the sense.

Q. That is the reason I object to it.

A. In the same sense as I took the opinion from Mr. Freeman's book I took that.

Q. On page 294, you copied also from Freeman's book, did you not, the statement of exceptions and the errors assigned?

A. Yes, sir.

Q. Turn to page 43; as I read from the book of Mr. Freeman the statement of facts, will you suggest from your book the difference—name the difference—between the statement as you have it and as Mr. Freeman had it: "This was an action of forcible entry."

A. "In an action of forcible entry."

Q. Brought by Charles Balance *vs.* George Leonard."

A. "Brought by Balance *vs.* Leonard."

607 Q. "Before a justice of the peace of Peoria county."

A. "Before a justice of the peace."

Q. "Where a trial was had and a verdict and judgment for the plaintiff."

A. "A verdict was had and judgment for plaintiff."

Q. "On appeal to the circuit court of that county."

A. "On appeal to the circuit court."

Q. "There was a verdict and judgment for the defendant."

A. "There was a verdict and judgment for the defendant."

Q. You have mentioned the only differences?

A. Yes, sir.

Q. You have mentioned every word different, have you not?

A. I believe so.

Q. On page 58 of your book I will read the statement made by Mr. Freeman, and I will ask you to make such corrections as are necessary to make it correspond exactly with your book: "The opinion in this case was originally prepared by Mr. Justice Beckwith, and after a hearing at the April term, 1865, adopted, with slight modifications, as the opinion of the court."

A. That line I regard as part of the opinion, as it is in prac-

608 tice invariably furnished by the judges in their handwriting and endorsed upon the opinion.

Q. You have no knowledge as to how Mr. Freeman got this particular statement, have you?

A. No other than is derived from my general familiarity of the mode in which that statement gets into his book.

Q. You copied it *verbatim*, did you not, into your book?

A. That sentence is identical; yes, sir. I would say, in relation to that sentence, that it is a sentence on its face that the reporter would have no right to put there. It is a statement of the mode in which the court came to its conclusions, and, if made by the authority of the court, it is the statement of the court; if made without its authority it is unauthorized anyway.

Q. I am not asking you if anything in Freeman's book is there rightfully. I am only asking you as to what has been copied.

A. Well, as I say, I regard that as part of the opinion.

Q. Now, on page 199, beginning with the instructions of the court below, how much is copied there from Freeman's book? Is it not all copied, up to the opinion, word for word?

609 A. 199 in my book and 293 in Freeman's.

Q. Yes.

A. That consists of instructions on both sides; I presume that it is a copy; the same copy that I would have made if I had gone to Ottawa to get it.

Q. Turn to page 247 of your book; I will read the statement as contained in the book of Freeman, and as I read please insert the words necessary to make it exactly as yours is: "This was a suit."

A. "Suit."

Q. "Originally commenced by Samuel C. Taylor."

A. "By Taylor."

Q. "Against Franklin Elijah."

A. "Against Elijah."

Q. "Before a justice of the peace to recover the value of certain corn."

A. "Before a justice of the peace;" that is the same.

Q. "On appeal to the circuit court and trial there, the plaintiff recovered a verdict and judgment for $53, whereupon Elijah sued out a writ of error."

A. That is omitted—"Elijah sued out a writ of error."

Q. "The facts are stated in the opinion."

A. "The facts appear is the opinion."

610 Q. Now, is it not true that you have omitted the first name of the parties and two or three words? Otherwise it is a *verbatim* copy.

A. Well, all the materials for either statement appear to be in the opinion; it is not a copy at all; there is the use of different language. One is four lines and the other is seven, and the materials for both are in the opinion, so far as I see.

Q. You say the language is not the same?

A. No, the language is not the same; four lines and eight lines in the same type do not indicate the same language.

Q. Look again and see if you can find any eight lines in Mr. Freeman's statement.

A. Well, seven lines as against three and a half, if you want to be accurate. Mine is exactly the same space; the amount of the

verdict and judgment appears in the opinion as $53, who was the plaintiff and who was the defendant, and that it was for certain form.

Q. Is this not one of the statements of Mr. Freeman which you said you considered you had not the right to copy in his words?

611 A. I did not say that I did not consider that I had the right to copy any statement in Mr. Freeman's words.

Q. Turn to page 306 of your book, of the same volume, and state if this statement of fact is not copied: "This was a motion in the circuit court of Iroquois county, at the June term, 1863, to set aside the sale of certain lands made by order of that court in a suit for partition." Is not that copied into your book, the words "of the circuit court" being changed in position and the county and term omitted; with that change is not — a *verbatim* copy of Freeman's statement?

A. Well, if you make a sufficient number of exceptions as to the language, you might affirm that any one statement was a copy of any other. I will say, however, that the first line of the opinion is: "This was a motion in the circuit court of Iroquois county to set aside a sale on partition, and all the orders made in the cause." Mine is: "This was a motion in the circuit court of Iroquois county

612 to set aside a sale for partition, and all the orders made in the cause." By which I perceive that Mr. Freeman's sentence and my own are both copies of the first sentence of the opinion. There is not much originality in either of them, as you can put——

Q. Well, you changed the order of the words from the opinion, did you not, by transposing the words "circuit court?"

A. Well, the three sentences are essentially identical. I do not consider anything in the statement of facts which is any value to the book or in which the reporter can have any value unless by going to the record he gets something that is not in the opinion.

Q. You mean that the property of the reporter would consist solely in what you could not get by going to the record?

A. No; what I could not get by going to the opinion, if all there is in the statement of fact is in the opinion, then it amounts to nothing.

Q. And he would have no right to the statement?

A. He would have no right to the facts; he would have a right to the language.

Q. Turn to page 461. I will read the statement of fact as

613 contained in Mr. Freeman's book, and will ask you to make the corrections so as to make it correspond with the same statement in your book: "This was an indictment in the court below against William W. Armstrong."

A. This was an indictment against Armstrong.

Q. "For feloniously administering to a woman then pregnant."

A. "For feloniously administering to a woman then pregnant with child."

Q. "Certain drugs and liquids."

A. "Certain drugs and liquids."

Q. "With intent to procure a miscarriage."
A. "With intent to procure a miscarriage."
Q. "The verdict of the jury was as follows:"
A. "The verdict of the jury finds the defendant guilty."
Q. The People of the State of Illinois *vs.* William W. Armstrong. We, the jury, find the defendant guilty, and fix his term of imprisonment in the penitentiary at two years, with a fine of $100?
A. "And fix his term of imprisonment in the penitentiary at two years, together with a fine of $100." All that is extracted
614 from the opinion. I will now read the sentence in the opinion from which it is taken.
Q. No; let me ask you about that. I have not asked anything about the opinion.
A. You asked me whether this line is copied from Freeman. They are both copied from the court, and the language of the court seems to be copied. I should have stated as to the words "With the felonious intent of administering to a woman then pregnant," etc., and then your next clause, with a similar statement of facts, that the jury found the defendant guilty. But Freeman copies his statement: "A trial was had and the following verdict was rendered: We, the jury, find the defendant guilty, and fix his term of imprisonment in the penitentiary at two years, together with a fine of $100." That is all copied from the opinion, so that Freeman's statement does not apply — any fact that is not found in the opinion, and you have the same liberty to infer that my two or three sentences in relation to it are condensed from the language of the court as you have to infer it was taken from Freeman's book.
615 Q. Can you state whether you took this statement from the opinion of the court or copied it from Freeman's statement?
A. I do not recollect the act now.
Q. You cannot say whether you did one or the other?
A. I should not have taken it, probably, if I had not seen from the language of the opinion that it was correct.
Q. Allow me to call your attention to the fact that in your copy you give the name and Mr. Freeman does also, but in the opinion from the court that does not appear.
A. Well, we all differ. Mr. Freeman says, "William W. Armstrong;" I say, "Armstrong," and the court says simply it was an indictment. Of course the title of the case indicates that it was W. W. Armstrong.
Q. And you cannot tell, then, which you copied it from—Mr. Freeman or the opinion?
A. It is not an exact copy of anything. It is a different statement.
Q. You got it somewhere to insert. You have stated already that all the opinion you had you got from this book.
A. Without copying it; getting it is one thing and copying it is another.
616 Q. Then you cannot tell whether you got it from the opinion or whether you got it from Freeman's book?
A. The statement is published in my book as mine; it had not

previously been stated by the court or Freeman in the way I published it. The facts contained in the statement are the same as stated in the opinion of the court and in Freeman's statement.

Q. Is it not true that if you take the statement of Freeman and strike out these words, "In the court below William W.—People of the State of Illinois *vs.* William W. Armstrong," that the two would be exactly the same?

A. No, sir; because you have not struck out enough.

Q. Then what other words would you strike out to make it exactly the same?

A. You would have to strike out the words "the jury in the above case find the defendant," in addition to what you have already struck out. One is eight lines and the other is 12 lines. That indicates a difference.

Q. Take volume 38, turn to page 21 of the book, and, as I
617 read the statement made by Freeman, insert such words as would make it correspond with yours. "This was an application to the court below."

A. "To the circuit court of Winnebago county."

Q. "For a writ of mandamus in the name of the people of the State of Illinois."

A. "For a writ of mandamus in the name of the people," etc.

Q. "On the relation of George W. Byrnes."

A. "On the relation of Byrnes and others."

Q. Michael Hawkins, Robert B. Hawkins, Alanson Hawkins, Albert Hawkins, John Gilks, John Ingraham, Aaron Shrefler, Alpha B. Blair, John Michael, Joseph Jeffcoat, and Andrew Yates, *vs.* John B. Welch."

A. All those names are omitted until we come to *vs.* I say, "*vs.* Welch."

Q. "The clerk of the circuit court of Kankakee county."

A. "The clerk of the circuit court of Kankakee county."

Q. "To compel him to issue a writ of injunction."

A. "To compel him to issue a writ of injunction."

Q. "Which had been awarded."

A. Which had been first refused by Charles R. Starr, circuit judge of Kankakee county, and afterwards on the same papers
617½ granted by Hon. Benjamin Sheldon."

Q. "The facts are fully stated in the opinion of the court."

A. "Circuit judge of Winnebago county." Those words follow.

Q. With the exception of this change, they are the same?

A. Well, those changes are very considerable. Where Freeman says "which had been awarded" I say "which had been refused."

Q. Did you read as being omitted the words "of the circuit court of Kankakee county?"

A. No; I read after the words "to compel him to issue a writ of injunction." Now, Freeman's statement says, "which had been awarded by the judge mentioned." My statement says, "which had been first refused by Charles R. Starr, circuit judge of Kankakee county, and afterwards on the same papers granted by Hon. Benjamin R. Sheldon, circuit judge of Winnebago county."

Q. Where did you get that information?
A. I presume I must have got it from the opinion.
Q. From the opinion in Mr. Freeman's book?
A. Well, wait until I examine. Yes; it is all in the opinion in Mr. Freeman's book:
618 Q. Now look at page 28. I will read it as it appears in the statement by Freeman and you correct it to make it correspond with yours. "This was a suit in chancery."
A. Omit "This was."
Q. "Instituted in the court below."
A. That is omitted.
Q. "By George W. Gage, William P. Tucker *vs.* William M. Derby."
A. All that is omitted.
Q. "Henry S. Monroe, Henry T. Porter, Henry Peak, and Artemus W. De Long."
A. I say, "Suit in chancery for an accounting between partners, instituted by Gage *et al. vs.* Derby *et al.*"
Q. "For a settlement of a partnership account."
A. That is not in mine.
Q. "A decree was rendered dismissing the bill as to all the defendants, except Derby and Monroe."
A. That I haven't got.
Q. You have got the words "that a decree was rendered?"
A. "A decree was rendered." Yes, sir.
Q. "Finding that Derby, according to his own admissions, had in his hands of the money of the plaintiffs the sum of $5,500, which he was directed to pay over to them."
A. I have, "A decree was rendered that Derby, on his
619 own admission, had in his hands of the money of the plaintiffs the sum of $5,500, which he was directed to pay over to them."
Q. Turn to page 139 of your book. I will read the statement as made by Freeman and you correct it to make it correspond with yours.
A. Well, here you perceive one is three-quarters of a page and the other is about one-fifth of a page.
Q. "This was an action of ejectment."
A. "Ejectment."
Q. "Instituted in the court below by Charles Mason *vs.* Solomon Ely."
A. "By Mason *vs.* Ely."
Q. "To recover lot No. 1 and the east half of lot No. 2, in block No. 15, in the southern addition of Miller *et al.* of the city of Bloomington, in McLean county." That is the same with the exception of the words you have suggested.
A. The description of the lot is the same as in the opinion.
Q. "On the trial the defendant proposed to prove the declaration of the testator made at the time he wrote the will."
A. "On the trial the defendant offered to prove testator's declaration made at the time he wrote the will."
620 Q. As to what he intended to give the plaintiff?

A. "As to what he intended to give to the plaintiff."
Q. "Which the court refused, and an exception was taken."
A. Which the court refused, and an exception was taken.
Q. You have read from your book, have you?
A. Yes, sir.

Mr. HIGH:

Q. In making this comparison has complainant's counsel read to you the entire case as it appears in Freeman's book?

Counsel for the complainant objected to any questions being asked by the defendants' counsel until his cross-examination should be finished.

The WITNESS: I stated before, at the outset, that one was three-quarters of a page and the other one-fifth.

Counsel for the defendants states to the witness that he is at liberty to make any explanation he desires to each of his answers after having answered the question.

Mr. LE MOYNE:

Q. Turn to page 176, beginning at the middle of the page,
621 where it says, "It is further stipulated and agreed," and state how much you have copied of that statement from Freeman's book into yours.

A. That stipulation seems to continue to the words "offered in due course upon the trial," on page 184, and I presume that the copy in my book is correct, if Mr. Freeman's is, which is in other words from the middle of page 176 of my book to the words "offered in due course upon the trial," at the top of page 184 of my book.

Q. Turn to page 197 of your book. I will read Mr. Freeman's book and ask you to correct the statement I read to make it correspond with yours, beginning, "It appears that the case was tried in the court below on an agreed state of facts."

Mr. HIGH: You are not beginning with the beginning of Freeman's statement, are you?

Mr. LE MOYNE: No. I object to you asking questions. I do not pretend to read all the statement. I am asking the witness about such examples that I claim are similar, to have them ex-
622 plained by the witness, if he can do so. I read from the part of Freeman's statement which begins, "It appears that the case was tried in the court below on an agreed state of facts."

Q. I will ask you, Mr. Denslow, to begin in the second line of your statement with the words, "The transcript filed in this court," and I will begin with the words, "The transcript filed in this court," by Mr. Freeman, where the two statements have these words, "The transcript filed in this court."

A. "That transcript also contains"—without a period after court—"contains an agreed state of facts on which the cause was tried in the court below and after the formal entry of judgment the following."

Q. Now, I will read from Myers.

A. The transcript filed in this case. That transcript also contains as a part of the entry of record in the court below after the formal entry of judgment the following: "Whereupon said plaintiff, by Parks, his attorney, entered his motion for a new trial herein, which motion is overruled by the court, to which ruling of the court in overruling his said motion for a new trial and the judgment
623 of the court aforesaid the said plaintiff, by his said attorney, then and there excepted and prays an appeal to the circuit court, which said prayer it is ordered by the court be granted.

Q. "Neither the agreement of the parties nor the proceedings."

A. "Of the parties" is omitted. "Neither the agreement as to the facts nor motion for a new trial nor the grounds thereof."

Q. "Well incorporated in the bill of exceptions and the question arising upon this condition of the record."

A. The words "upon the condition of the record" are omitted.

Q. "Is whether the court can properly consider the alleged errors at all."

A. "Is whether the court will consider the alleged errors at all."

Q. You have mentioned the only differences between the two, have you not?

A. Well, I think so.

Q. You say that you did not consider that you had the right to copy the arguments of counsel as furnished by Freeman?

A. Whatever I have said in relation to that is on the record.

Q. Well, what was the fact as to the arguments of counsel?

624 A. As to whether I had the right to copy them.

Q. Whether you did copy them or not?

A. Your question was as to whether I had the right to copy them.

Q. No; my question is whether you have stated that the arguments of counsel, as furnished by Mr. Freeman, was part of the material which you took pains to avoid?

A. His mode of stating the arguments of counsel; the language employed by him in doing so, was probably in my mind in making that clause of the affidavit.

Q. Well, is it true or not; did you copy or did you not copy from Freeman's book the arguments and authorities of counsel?

A. That would appear on an examination.

Q. Cannot you tell without examination whether, in making your book, you copied his in that regard?

A. I do not think or remember that I did.

Q. Have you any recollection on the subject? If so, state it.

A. I say I do not think or remember that I did.

Q. You do not remember that you did?

A. No, sir.

Q. You cannot swear whether you did or not; is that what you mean?

625 A. I think I have answered your question; whatever I have stated in the course of my testimony is, of course, sworn to.

Q. And you now say you cannot swear whether or not you copied the arguments of counsel from Freeman's book?

A. I say I do not think or remember that I did.

Q. Well, do you remember whether or not, in this examination, you testified that the arguments of counsel as furnished by Freeman was part of the material which you took elaborate and careful pains not to use?

A. Well, the testimony will speak for itself.

Q. You do not now remember whether you stated so or not?

A. The object of taking down the testimony in short-hand is to dispense with remembering very accurately these matters, and as you have it once I think that is enough.

Q. Do you decline to answer the question?

A. No, sir; I have answered it.

Q. Will you turn to page 436 of volume 38 and tell me whether you have copied from Freeman the authorities and points made by the attorney for appellants?

626 A. It seems to be copied, so far as the authorities are concerned.

Q. Look at the next case—Mr. Evans' authorities; are they copied or are they not?

A. Yes, sir.

Q. Copied, is it not?

A. Yes, sir.

Q. Turn to page 212 of the 37th volume—Mr. Balance's authorities—and state whether or not they are copied *verbatim*.

A. I have no doubt they are; yes, sir.

Q. Is it not true that all the authorities cited by the counsel in any of the cases here and only those as reported by Mr. Freeman were put into your books?

A. None were put into mine that had not been put into Mr. Freeman's.

Q. And what were in Mr. Freeman's were put into yours?

A. No, sir.

Q. You ommitted some of the authorities cited?

A. Yes, sir.

Q. The only change was that you omitted some of them, of the arguments of counsel and authorities cited?

A. I may in some instances have corrected the paging, but I did not cite any new authorities.

627 Q. Did not make any new arrangement?

A. No, sir.

Q. Who marked the paging on your book?

A. The printer, I think—at *at* the top.

Q. Yes; the top paging.

A. I think it was done by the printer.

Q. It was not done by you?

A. No, sir.

Q. Why was the paging made so irregular, the same page being sometimes repeated and sometimes there being a skip of three or four pages?

A. Well, I did not regulate the paging.
Q. Do you know why that was done?
A. No; I do not think I do.
Q. You knew it was done, did you not?
A. Well, I knew that where new matter was inserted in my book, for instance, occupying several pages that were not in Freeman's, it would be necessary to repeat the paging which had gone on to the page, the top page from the last page of Freeman's.
Q. Do you mean it would be necessary to make it correspond with Mr. Freeman's?
A. Mr. Freeman's paging and the star paging in the side
628 of this book were intended to be identical.
Q. Now, observe on page 491 of your book, volume 38, the next page to that is 493.
A. Well, that results, I presume, from leaving out portions either of the statement of fact or of the brief of counsel.
Q. Well, page 491 would indicate 491 of Freeman's book?
A. Yes, sir.
Q. And 493 is the same?
A. Yes, sir.
Q. To make them correspond with Freeman's pages the paging in your book is irregular?
A. Yes, sir.
Q. And not consecutive?
A. Yes, sir; the bottom paging is the only consecutive paging.
Q. You say you did not prepare the table of cases?
A. No, sir; I think not.
Q. No proof of the table of cases was furnished you to read or examine?
A. I think not.
Q. Do you know who did it?
A. No, sir; I did not know.
Q. When did you return from New York during the summer that you were making these books?
A. I think about the first of September.
629 Q. State your best recollection as to whether those conversations between you and Callaghan in regard to what portions of Mr. Freeman's book you had a right to copy from took place about the time of your return or how long afterwards?
A. Some of my conversations were before, but those were very brief, and those that arose afterwards were mainly, I think, after the begin-ing of this suit.
Q. When the price for your labor in this matter was being discussed was not the question as to how the materials would be procured also discussed between you?
A. I think that there was no other discussion of the mode of procuring the materials than that he stated that he knew Mr. A. P. Callaghan, of the firm of Callaghan & Co., was having a number of these volumes prepared for publication on a certain plan or system which he described.
Q. State fully what it was.

A. And of which I have already stated in the previous part of my testimony—that is, taking the matter in Freeman's book, which was public property, including, specially, the opinion and the matters which were of record, but omitting Mr. Freeman's literary
630 work, making use of the facts that were of record, and using Mr. Freeman's book as evidence of what the facts were. He wanted so much of the book as was public property adopted; so much as was private property supplied from the opinion and from other portions of the book, if other portions indicated that they were public property on their face, and in that manner he proposed to get out the volumes, and asked me whether I would take them to do; if so, for what sum.

Q. Did he then designate to you what portions of Mr. Freeman's book were public property, or did he leave it to your discretion?

A. I think that was more a subject of subsequent correspondence and not all our conversations.

Q. Well, did he at any time while you were at work on these books designate what portions of Mr. Freeman's book you were to use as public property? If so, state what they were.

A. The opinion.

Q. Just answer the question as to whether he did designate, and then the other part of the question—what he designated.

631 A. He designated what for the purpose of this piece of work he wished to be regarded as public property—what he considered we were entitled to take in the main.

Q. State what he so designated.

A. The opinion and such portions of the statement of facts as bore internal evidence of being extracts from the records; more particularly the exhibits in evidence, extracts from decrees and from judgments and documents, and extracts of that kind; and, where there was a general statement in relation to arguments of counsel, that it would be sufficient to confine the extract to the authors, without preserving any of the language of counsel or using any of the language of Mr. Freeman, but using Mr. Freeman's statement as evidence merely upon which we might assume if we went to Ottawa and examined the proof on file — would find that the cases named were actually cited by counsel.

Q. Did he propose or offer to furnish you any material except the books of Freeman's?

A. No, sir.

Q. Did he say to you that he had had or was having other
632 volumes of Freeman's books reprinted in the same way?

A. Yes, sir.

Q. Did he name to you what ones had been done in that way?

A. From 31 to 38, I believe, were to constitute the series.

Q. Had you at the time this bill was filed done any work on any other volumes subsequent to 38?

Defendants' counsel objects to any testimony subsequent to volume 38 as incompetent, irrelevant, and not proper cross-examination.

A. Well, I do not know.

Q. You say you do not know whether you have done any other work on any volume later than 38?

A. At the time the bill was filed—I do not know when the bill was filed?

Q. Filed in December, 1877.

Counsel for defendants instructs the witness that he does not desire him to answer any questions concerning any volumes later than 38, for the reason that it is not proper cross-examination and
633 that complainant has closed his case without having gone into such volumes on the examination of his witnesses.

Q. What do you say to that question?

A. I do not answer it if I am instructed not to.

Redirect examination by Mr. HIGH:

Q. Turn to page 139 of volume 38, taking both editions, and state if that is one of the pages to which your attention was called by complainant's solicitor, concerning which he instituted a comparison with you between the two editions.

A. I think it was.

Q. State whether the solicitor for the complainant, in instituting that comparison with you in reading from Mr. Freeman's edition, read or stated all of the statements of the case as given by Freeman, or whether he omitted any; and, if so, how much did he omit?

A. He omitted some fifteen lines or thereabouts where I say, "The language of the will and the facts shown by the testimony appear fully in the opinion of the court." Mr. Freeman says,
634 "Under the following clause in his will." Shall I read those fifteen lines?

Q. Which were omitted by the counsel?

A. Yes.

Q. If you please.

A. "Second. To Charles Mason I give and bequeathe the following property, to wit: So much of lots 1 and 2, in block No. 15, in the southern addition of Miller *et al.* to Bloomington as is now enclosed by a fence, including the house where the Widow Crawford now lives. It appears from the testimony that lot 2 lies west and adjoining lot 1, both were enclosed by an exterior fence, and were divided into seperate enclosures by fences running north and south through the middle of each. The house where the Widow Crawford lived was in the west enclosure. The dwelling of the testator was in the east enclosure, being on the east part of lot 1."

Q. All of which matter you have just read is in the Freeman edition, is it not?

A. Yes, sir.

Q. And which was omitted by the solicitor for the complainant in reading to you?

A. Yes, sir.

635 Q. And does not appear in your edition?

A. No, sir; it is all contained in the opinion of the court.

Q. Turn to page 197 of the two editions. Is that one of the cases to which your attention was called by complainant's solicitor in his cross-examination, and on which he instituted a comparison between the two editions with you?

A. I believe it was.

Q. State whether the counsel for the complainant, in reading to you the statement of the case as it appears in the Freeman edition, read the entire statement, or whether he omitted any part of it. If he omitted any part of it how much did he omit?

A. He omitted about thirteen lines, I think, and confined his reading—there are ten lines which he entirely omitted, I believe; three lines which he read the whole or portion and instituted some comparison, and the portion read as being a copy and consisting of an extract from a judgment, beginning at the word "whereupon" and ending at the word "granted," being seven lines.

636 By consent of the parties the signature to this deposition is waived.

EUGENE B. MYERS, Complainant,
vs.
BERNARD CALLAGHAN *et al.*, Defendants. } In Chancery.

Testimony taken before Henry W. Bishop, master in chancery of said court, Friday, the 17th day of January, A. D. 1879.

Present: J. V. Le Moyne, Esq., solicitor of the complainant, and James L. High, Esq., solicitor for the defendant-.

D. HARRY HAMMER, a witness called on behalf of the defendants, being first duly sworn, was examined in chief by Mr. HIGH, and deposes and says as follows:

Q. State your name, age, residence, and occupation.

A. D. Harry Hammer; lawful age; occupation, attorney-at-law; Chicago.

Q. How long have you been an attorney-at-law?

A. About 13 years.

637 Q. How long have you been practicing your profession in Chicago?

A. 13 years.

Q. Do you know the complainant in this suit, Eugene B. Myers; if so, how long have you known him?

A. I have known Mr. Myers by sight ever since I have been in the city.

Q. State whether at any time after the great fire in Chicago of 1871 you had any conversation with Mr. Myers concerning certain volumes of Illinois Reports; if so, when and where was the conversation had?

A. At some time between the 15th of February and the middle of March, 1872. Mr. Myers called at my office, at No. 3 West Madison street.

Q. State what was said by both of you in the conversation, if anything followed.

A. Mr. Myers either noticed on the shelf or said that he called in reference to some Illinois Reports I had. I think they were ranging from volumes 30 to 39. He asked me what I would take
638 for them. I told him I did not care to sell them; that I preferred to replace the set I had lost by the fire, and he said that it would be difficult to replace them; that these volumes I had were valuable. I think he offered me at the time $10.00 a volume for them; that they were out of print; that his plates had been destroyed in the great fire of October, and it was not his intention to reprint them. I then suggested to him that perhaps in due time some one else would republish them. He stated that the expense connected with publishing would be so great that no one else would be likely to undertake the republication of those volumes.

Q. Do you recollect anything else that was said between you at that conversation?

A. I think that was the main points on that question, as far as my memory serves me now.

Q. Do you recollect whether anything was said by him, and, if if so, what, as to the means of furnishing copies of those volumes or as to how they could be obtained?

A. Well, Mr. Myers stated that he was purchasing odd volumes or portions of libraries, and that he had some on hand.

639 Q. What, if anything, did he state as to how he was purchasing, whether new volumes or second-hand?

A. Well, he said he was purchasing second-hand volumes and portions of libraries wherever he could get them.

Cross-examination by Mr. LE MOYNE:

Q. Do you not remember that you sent a note or a postal card to Mr. Myers telling him you had some volumes and asking him to call and see you?

A. I do not remember ever sending Mr. Myers a note.

Q. Do you not remember that that visit to your office was made in pursuance of an invitation by you?

A. I do not.

Q. You cannot say whether it was or not?

A. I do not think it was; perhaps it might have been—my partner might have sent some such card, but I have no recollection of ever sending any such card. I think that one of Mr. Myers' salesmen, John—I don't know his other name—frequently called at my office, and he may have informed Mr. Myers that those volumes
640 were there. I never, to my knowledge, sent Mr. Myers or any one any postal card. The books I saved from the fire I did not care to dispose of, anyway. There was only a few. I saved them with great sacrifice and trouble.

Q. Do you remember that the highest price he offered you was $6.00 for those volumes?

A. No, sir. I am positive that Mr. Myers told me that those volumes were worth $10.00 a volume.

Q. Did he tell you he would give ten for them?
A. That is my best recollection.

Redirect examination by Mr. HIGH:

Q. You have been asked whether this interview did not come about at your request. State what was the result of it, as to whether you did or did not accept his offer.
A. I refused to sell them to Myers on any condition.

EUGENE B. MYERS, Complainant,
vs.
BERNARD CALLAGHAN *et al.*, Defendants. } In Chancery.

641 Testimony taken before Henry W. Bishop, master in chancery of said court, Saturday, the 18th day of January, A. D. 1879.

Present: J. V. Le Moyne, Esq., solicitor for complainant, and James L. High, Esq., solicitor for defendants.

FRANK SHEPARD, a witness called on behalf of the defendants, being first duly sworn, was examined in chief by Mr. HIGH, and deposes and says as follows:

Q. State your name, age, residence, and occupation.
A. Frank Shepard; lawful age; occupation, law-book seller, 182 Dearborn street; residence, 416 Michigan avenue, Chicago.
Q. How long have you been connected with the law-book trade?
A. About eight years.
Q. State whether you know Mr. Myers, the complainant in this case; if so, how long have you known him?
A. I have known him ever since I have been in the law-book business.
Q. For about eight years?
A. Yes, sir.
642 Q. Were you ever in the employ of Mr. Myers prior to the great Chicago fire of 1871?
A. Yes, sir.
Q. How long and up to what time and in what capacity?
A. Up to the time of the fire as a clerk.
Q. State, if you know, where Mr. Myers kept the stereotype plates of volumes 32 to 38 of the Illinois Reports prior to the great fire of 1871.
A. I only know by hearsay.
Q. Do you know by anything that he has told you?
A. Yes, sir; I suppose they were kept in the basement?
Q. Do you know from what he told you?
A. Yes, sir.
Q. From information derived from him?
A. Yes, sir.
Q. What knowledge, if any, have you derived from statements made to you by Mr. Myers as to what became of those plates in the great fire of 1871?

A. They were burned.

Q. You mean that you derived such knowledge from him?

A. Yes, sir; not of my own knowledge.

Q. When did he ever tell you that?

643 A. Well, I was Mr. Myers' clerk, and in the course of my business with Mr. Myers he has told me at different times; I could not tell what dates.

Q. He has told you several times?

A. Yes, sir.

Q. When after the great fire of October, 1871, did you again have anything to do with Mr. Myers in a business way, if ever?

A. About a year and a half after the fire.

Q. In what capacity did you then become connected with him?

A. As a clerk.

Q. How long did your relation continue with him after that time?

A. About 16 to 18 months.

Q. Have you any knowledge as to whether during that time Mr. Myers had any copies of any of the volumes of Illinois Reports from 32 to 38 on hand or for sale in his business?

A. He did have.

Q. From what source did he get them?

A. I do not know.

Q. State in what condition they were; I mean as to whether they were new or second-hand volumes.

A. I should call them secondhand.

Q. Have you any knowledge as to whether during your sec-

644 ond employment there after the great fire Mr. Myers received any printed copies in sheets or otherwise of either of the volumes 32 to 38 of the Illinois Reports from Albany or elsewhere?

A. He did not, while I was with him.

Q. State, if you know, whether, during the interval of your second employment with Mr. Myers, after the fire of 1871, he had any means of furnishing Illinois Reports, volumes 32 to 38, inclusive, other than at second-hand.

A. He did not.

Cross-examination by Mr. LE MOYNE:

Q. Mr. Shepard, what time did you go to work for Mr. Myers after the fire? Give the date.

A. About the first of April, 1873. I went with him just after he moved in his Washington street store.

Q. Do you remember how many copies of volumes 32 to 38 he had when you went there?

A. No, sir.

Q. Do you remember of writing up any of these volumes

645 and putting them on the counter yourself?

A. Yes, sir.

Q. Now, were not those volumes what you would call new volumes that had been received from Albany?

A. No, sir.

Q. How many were there, can you remember?
A. I could not.
Q. There was quite a number of them, wasn't there?
A. Not such a very many.
Q. Well, how many, as near as you can recollect?
A. Oh, I should say he had, perhaps, 10 volumes of 30 and four or five volumes of 31. That comprised all that there were—30 and 31.
Q. Did you not have some of 34?
A. No, sir.
Q. 35?
A. No, sir.
Q. Nor 38?
A. No, sir; not that I remember.
Q. Well, do you swear he did not have any, sir, within the time you were there?
A. New?
Q. New?
A. No, sir; he had not any.

646 Q. And that he never had any new ones from that time out, as long as you continued with him?
A. Of what volumes?
Q. Of volumes 32 to 38?
A. No, sir.
Q. How long did you continue with him?
A. 14 or 16 months.
Q. What was the occasion of your leaving him?
A. He discharged me.
Q. For what?
A. Well, the only reason that he ever gave me was that I overstayed my time on vacation.
Q. Did he not find out and charge you with selling books for other persons and being paid for them out of his business?
A. No, sir.
Q. I mean outside of his business?
A. No, sir.
Q. Were you not, while you were receiving a salary from him, selling books for Cockcroft?
A. I was not.
Q. Did you not sell any during that time?
A. I did; I sold two sets of Lord Chancellor's complete, which he didn't have in stock; they were my property; he never charged me with it, and never said that I did.

647 Q. And that was never given as a cause of your discharge?
A. No, sir.
Q. Did you sell any volumes of the American Railway Reports?
A. I did not.
Q. During that time?
A. No, sir.
Q. Did your wife sell them?
A. No, sir.

Q. Did you have any circulars issued?
A. From me?
Q. Yes, sir.
A. No, sir.
Q. Did you have any one send any circulars out for you to advertise law books for sale during the time you were working for Mr. Myers?
A. I did not.
Q. Did your wife send out any?
A. Not that I know of.
Q. Did you have printed bills from Cockcroft & Co. during that time which you used?
A. I did not.
Q. You swear you never did use bills of that kind while you were in his employ, and send out bills for books?
A. I swear that I never sold any books for myself while I was in his employ.
648 Q. Did you ever send out any books sold for other persons than Myers during that time?
A. Yes, sir.
Q. Who for?
A. For James Cockcroft & Co.
Q. Where were the books sent from?
A. New York.
Q. Who sold them?
A. James Cockcroft.
Q. Who collected the money for them?
A. James Cockcroft & Company.
Q. You had nothing to do with it?
A. Nothing whatever.
Q. Were you a member of the firm of Cockcroft & Company?
A. I was not.
Q. How did you have the bills send out?
A. Mr. Cockcroft had some 10 or 15 Western subscribers to the American Railway Reports, which he gave me when he left here in payment of some back debts that he owed me, that he turned over to me, and he would send the books, and then I would be allowed on the difference.
Q. Was that while you were at work for Mr. Myers?
A. Yes, sir; Mr. Myers knew and Mr. Myers gave me before Mr. Cockcroft the privilege of attending to all the unfinished
649 business that Mr. Cockcroft had. Mr. Cockcroft went in and saw Mr. Myers and asked him if I could do it.
Q. Was that in your presence?
A. Yes, sir; and Mr. Myers agreed to it. Then I went away on a vacation three or four months after I was with Mr. Myers; went to work for him the second time, and Mr. Myers did not pay me anything in consideration that I was receiving money from Mr. Cockcroft; refused to on that account.
Q. Was that when you settled—at the time you left?
A. We settled monthly.

Q. Do you mean to say that Mr. Myers did not pay you for the time you were entitled to be paid?

A. I said that I was gone about three months after I went to work for Mr. Myers. I say that I took a vacation of about a month, and that Mr. Myers refused to pay me for that month because Cockcroft was paying me for attending to his business, and with the consent of Mr. Myers.

Q. That was not, then, at the time of your discharge?

A. No, sir.

650 Q. That this question arose?

A. No, sir.

Q. You were paid all that you claimed was due you from Mr. Myers, were you not?

A. No, sir.

Q. You was not?

A. No, sir.

Q. You did not settle with him in full, then?

A. Well, I never said anything about that. Mr. Myers owes me still for half a week. I never asked him for it. Mr. Myers paid me at the time I was discharged. I went away the first of August, I think, and came back the first of September and Mr. Myers paid me for that month.

Q. What month?

A. For the month of September, which I was gone.

Q. Well, but I understood you to say that you were gone in August?

A. Well, this was when I first went to work for him—the year before that.

Q. My question was whether, when you were discharged, you were paid in full or settled with Mr. Myers?

A. I was not paid in full; no, sir.

Q. You gave a receipt in full, did you not?

651 A. I did not. I gave no receipt whatever. Mr. Myers, I presume, considered it in full. He paid me for a month-wages—that is, I was really in Mr. Myers employ until I came back—till he discharged me. I was in his employ and he paid me up to the time he discharged me, but he did not pay for half a week. He still owes me for half a week now.

Mr. HIGH:

Q. In whose employ were you between the date of the great fire in 1871 and the time when you subsequently entered Mr. Myers' employment?

A. I had charge of the relief department for the city—I cannot give the dates—and from there I went to Mr. Cockcroft.

Q. How long were you with Mr. Cockcroft?

A. About a year

Q. Do you mean the year immediately preceding your going back into Mr. Myers' service?

A. Yes, sir.

Q. And this arrangement, as I understand you, concerning the

transaction of Mr. Cockcroft's business was brought about for
652 the purpose of paying—securing you a balance of indebtedness due from him to you?

A. That he owed me at the time he went away, and with Mr. Myers' consent.

Mr. Le Moyne:

Q. I understand you to swear you did not continue to do Mr. Cockcroft's business or business in that name after you went into Mr. Myers' employ?

A. You did not understand me that, because I have not sworn it.

Q. Did you continue to do this business while you were in Mr. Myers' employ?

A. I continued to do Mr. Cockcroft's business; yes, sir.

Q. All the time you were in Mr. Myers' employ?

A. Yes, sir.

Q. How long after you went in there?

A. I could not tell you that; whenever there was any business came up I attended to it.

Q. Was that all the time of your employment with Myers?

A. Probably.

Q. You continued, then, to do that business during the time
653 that you were in Mr. Myers' employ?

A. Yes, sir; with the consent of Mr. Myers.

Q. I did not ask you anything about the consent.

A. Well, that was quite an important fact.

Q. When did Mr. Myers give that consent to you?

A. Before I went to work for him.

Q. Did he then stipulate that you should continue to do this business while you were in his employ?

A. Well, I would not say that. I was to attend to any business of Mr. Cockcroft's. Mr. Cockcroft, the same as any business man leaving the city, had ten thousand fags and ends to be attended to.

Q. To close up?

A. Yes, sir.

Q. Now, is it not true that after you went into Myers' employ books were shipped to you from New York to be sold for Mr. Cockcroft?

A. It is true that after I went into Mr. Myers' employ there was about ten volumes—I think it is just ten volumes—of Ameri-
654 can Railway Reports that Mr. Cockcroft owed me and gave me that were shipped to me. Those books were for subscribers that Mr. Myers never had had and had nothing to do with in any way, shape, or manner. They were Mr. Cockcroft's subscribers. It was a continuation; consequently, as the new volumes came out they were shipped to me, properly done up and labeled, ready to send off. I collected the money and paid Mr. Cockcroft the difference. I think he allowed me two dollars on a volume.

Q. State what volumes they were.

A. I could not tell you that; they were all the volumes probably that came up to the time, with what dropped off. Some dropped off.

Q. All the volumes of what?

A. American Railway Reports.

Q. How long after you went into Mr. Myers' employ was the last that you delivered or sold of that kind; do you remember?

A. I could not tell you that. I can tell by referring to Mr. Cockcroft's books.

Q. Have you charge of Mr. Cockcroft's books still?

A. I never had charge of them.

655 Q. Have you his books still?

A. I never had them.

Q. How can you tell by referring to them, then?

A. By referring to New York—to his books.

Q. That is the only way you can tell?

A. Yes, sir.

Q. You had no books of your own?

A. At that time?

Q. In regard to this transaction.

A. I kept no books—no, sir. I have memorandums that will show. There was nothing concealed about it.

Q. Will you bring that memorandum here and show it?

A. I will if I can find it—yes, sir. There is nothing in any way, shape, or manner but what I would just as leave Mr. Myers would know or that he did not know at the time.

Q. Do you swear that Mr. Myers did not give that as a reason for your discharge when he discharged you?

A. I swear positively that Mr. Myers did not. Afterwards I heard that Mr. Myers said that I was selling books around town, and I had a party go to Mr. Myers and ask him if he thought that

656 I had in any way, shape, or manner taken any of his stock and sold it—was not dishonest, in other words, and Mr. Myers told that party that I was not.

Q. Were you present at that time?

A. I was not, but that party will swear to it.

Q. Now, you swear that Mr. Myers did not then, at the time he discharged you, give that as a reason for the discharge?

A. I swear positively that Mr. Myers never made any charge whatever to me positively; Mr. Myers wrote me a letter when I came back——

Q. I object to you stating what the letter is; if you have got the letter produce it.

A. I do not know whether I have or not; it is nothing that I paid any attention —; probably I have that letter.

Q. Do you not remember at the time that Mr. Myers discharged you that he told you he did not want you because you had been selling, without his knowledge, Cockcroft's books?

A. If Mr. Myers says that to you he lies; he never did.

657 Q. Will you please answer my question without regard to what Mr. Myers may or may not say.

A. He never did, in any way, shape, or manner, make any charges to me from that day to this.

Mr. HIGH:

Q. Was it not the fact when you left Mr. Cockcroft's employ and went into Mr. Myers' employment the second time, about the month of April, 1873, you have testified, that Mr. Cockcroft was then closing up his business here and that he then left and went into business in New York city?

A. It was.

Adjourned to 11 o'clock a. m., Monday, January 20, 1879.

MONDAY, *January* 20, 1879.

Met, pursuant to adjournment, at 11 o'clock a. m.

Present: Same as before.

The cross-examination of the witness was then resumed by Mr. LE MOYNE as follows:

Q. When you were discharged by Mr. Myers was it done verbally or by letter?

A. By letter.

Q. Have you the letter?

A. I have.

Q. Please produce it.

658 (Witness produces letter.)

Are you willing to have it attached to your deposition as an exhibit or would you prefer to have a copy attached?

A. It does not make any difference to me.

Mr. LE MOYNE: I will ask to have it attached, then.

The WITNESS: I prefer to have the original; I might want to have it framed.

A copy of the letter is hereto attached, marked "Exhibit A."

Q. In the letter I observe it says, "Your salary will be continued to Oct. 1, if desired." Did you draw your salary to October 1st?

A. No, sir; I did not draw my salary to October 1.

Q. After this letter was written how much money did you receive from Mr. Myers for your salary?

A. $100.

Q. Was that the amount of your salary per month?

A. Yes, sir.

Q. You did not continue to work there any longer, did you, after this letter?

659 A. No, sir. Can I speak?

Q. If you wish to make any explanation of these answers now do so.

A. Not of these; I might want to make one of an answer I made here the other day.

Q. I have no objection to your doing so now.

A. I swore that I did not give Mr. Myers a receipt in full. Now, I am not positive about that; I might have done so, but I do not think I did, because if I had have had any dealings with Mr. Myers

ever afterwards I intended to deduct the amount that I claim was due me, although I never did have, and consequently we never exchanged any words in regard to it.

Q. Well, you could not have deducted it after giving a receipt in full.

A. Not if I give one; but I am positive that I did not, although I won't swear that I did not; if he has got a receipt in full, why he has got it.

Q. You stated that Mr. Cockcroft desired you to finish up his business after he went away?

A. Yes, sir.

Q. And that that was what you did in the way of selling
660 books, I understand you?

A. Yes, sir.

Q. And that was all I understood you to say you did?

A. Yes, sir.

Q. And he went away, as I understood you, shortly previous to the time when you went in with Mr. Myers?

A. I think he did not go away for some weeks after I went with Mr. Myers.

Q. You also stated that Mr. Cockcroft gave you ten volumes of reports?

A. I am not positive on the number, whatever the number was he gave me, whether it was ten or fifty.

Q. Were those some of the volumes that you sold afterwards?

A. Yes, sir.

Q. Did you not sell those ten volumes to Mr. Myers?

A. I did not.

Q. Did you sell any of them to Mr. Myers?

A. I did not. I never sold anything to Mr. Myers.

Q. What volume of American railway cases was it of which Mr. Cockcroft gave you these copies?

A. I could not tell you.

Q. When was it?

661 A. I could not tell you that.

Q. Was it about the time he went away?

A. No, sir.

Q. Was it afterwards?

A. These volumes that I sold were a continuation. The Railway Reports were continued. I think they came out, then, one volume a year. I tried to find some memorandums in regard to it, which I cannot, but I think that I sold either two or three volumes—that is, of the continuations—whatever the number was of that one volume.

Q. I am asking you in regard to the volumes which Mr. Cockcroft gave you, as you said on account of some debt that he owed you.

A. Now, Mr. Cockcroft never gave me those till the volumes came, whenever that was.

Q. You cannot say now when it was he gave it to you, whether it was in 1873 or 1874?

A. I presume there was a volume in 1873.

Q. And the ten copies that you have sworn that he gave you were of the volume that came out in 1873; is that what you mean?

A. Whatever volumes there were—yes, sir.

Q. In 1873?

662 A. I do not swear to any dates at all.

Q. You do not swear, then, that those volumes that you got from Cockcroft were given to you in 1873 or 1874 or 1875?

A. No, sir.

Q. Were they all given at once?

A. No, sir; they were a continuation.

Q. Well, were they all given to you at once?

A. They could not have been given to me at once, for they only came out once a year.

Q. Suppose they had been given to you in 1875, could he not have given you the volumes that were out up to that time?

A. No, sir; because he supplied himself after it was published before he left.

Q. And that could not have been done?

A. That could not have been done.

Q. So you will swear that they were not all received at one time?

A. Only the books that were out at that time.

Q. You cannot say what year it was in?

A. No, sir.

Q. You cannot say what year you received any of them?

A. No, sir; not to swear to it.

663 Q. But you know they were not all received one year?

A. They could not have been, because they were not published.

Q. Were you not in 1875 shipping by the express company here books to different parties in the name of Cockcroft & Company, C. O. D.?

A. Only the railway reports.

Q. Did you ship those reports in that way during 1875?

A. I do not know.

Q. You do not know whether you were selling them then or not?

A. I do not know; if they came out in that year, I was.

Q. You cannot swear now whether you were sending off these American Railway Reports during the year 1875, C. O. D., in the name of Cockcroft or Cockcroft & Company?

A. No, sir.

Q. You cannot swear to it one way or the other?

A. No, sir.

Q. You have no recollection on that subject?

A. No, sir.

Q. Can you remember of shipping any books by the United States Express Company on July 19, 1875, Cockcroft & Company to Cowgill, Wabash, Indiana?

A. No, sir.

Q. You do not remember whether you did or not?

A. No, sir.

664 Q. Do you remember on the same day of shipping any to W. H. Barnes, Jacksonville, Illinois?

A. No, sir.

Q. Do you remember of shipping any books in the name of Cockcroft & Company by the same express, on the same day, to Tannehill & Fee, Centreville, Iowa?

A. No, sir.

Q. I will ask you whether you did not ship books in that same way to J. D. Marston, Cambridge, Illinois, on the same day by the same company?

A. I do not know, but from your asking about so many names I have no doubt that a volume at that time was published. If so, why I did. I have sworn here that I shipped. If I have not I swear now, so as to be understood, that I shipped every volume that Cockcroft sent me that was published; they were a continuation. As those were published I shipped them. Now, if there was a volume published July 19, I shipped it.

Q. Well, I have no knowledge as to whether there was a volume published at that date. I am only asking as to whether you

665 did not ship books in that manner at that date?

A. I do not know.

Q. You cannot recollect?

A. I cannot recollect; doubtless I did.

Q. Now, observe all the shipments that I have called your attention to were made on the same day by the same express company, all made C. O. D.?

A. Yes, sir.

Q. You say that you have no recollection of any of them?

A. I say that I have no recollection of any of them.

Q. Was it so common, then, for you to ship books at that time that you cannot recollect whether or not these books were then shipped?

Defendants' counsel objects to any further questions concerning the shipments of books by the witness as not proper cross-examination, and instructs the witness that he is under no obligation to answer the same unless he desires.

A. I believe I would like to answer that question. I was shipping books when they were published. If a volume was published

666 then I shipped it. I kept no books, and was in no business for myself, and consequently could not tell whether that was the date or not.

Q. You cannot tell, then, how many you shipped at that time?

A. No, sir; but if only a volume was published a year I could not have shipped a very great many.

Q. I am asking you only about your recollection.

A. I cannot.

Q. You have no recollection of how many books you shipped in that way in July, have you?

A. No, sir; I may have shipped one and I may have shipped forty.

Q. You receipted, did you not, for the return collections to the express company?

A. I did, at Mr. Myers' store; very many of them were brought there. Mr. Myers knew I was doing it.

Q. I did not ask you anything about what Mr. Myers knew.

A. Well, I am telling you.

Q. You are telling this because you want to tell it and not because you are asked to.

A. Well, I am telling the whole of it.

667 EUGENE B. MYERS, Complainant,
vs.
BERNARD CALLAGHAN *et al.*, Defendants. } In Chancery.

Testimony taken before Henry W. Bishop, master in chancery of said court, Tuesday, the 21st day of January, A. D. 1879.

Present: J. V. Le Moyne, Esq., solicitor for complainant, and James L. High, Esq., solicitor for defendants.

JEREMIAH LEAMING, a witness called on behalf of the defendants, being first duly sworn, was examined in chief by Mr. HIGH and deposes as follows:

Q. State your name in full and your residence and occupation.

A. Jeremiah Leaming; age, 48; residence, Chicago, Illinois; occupation, a lawyer.

Q. How long have you been practicing law in Chicago or elsewhere?

A. In Chicago since January, 1867.

Q. Do you know the complainant in this case, Mr. Eugene B. Myers; if so, how long have you know- him?

668 A. I have known him ever since I have been in Chicago, and I do not know but before.

Q. State whether at any time after the great fire of October, 1871, you had any conversation with Mr. Myers concerning the volumes of Illinois Reports from 32 to 38, inclusive; if so, when and where, and state the substance of such conversations as near as you recollect them.

A. Yes, sir; I had several conversations with the complainant. I lacked from volumes 31 to 38, excepting, perhaps, volume 36, to complete the Illinois Reports.

Q. You may state in this connection what was the occasion of your lacking these volumes.

A. My library was burned in the fire of 1871, which contained the Illinois Reports, and I had been able, partially, to collect volumes, I think, up to 31, inclusive, and then there was a gap that I could not fill. I applied to Mr. Callaghan as well as to Mr. Myers to see if I could procure these volumes, and to the complainant particu-

larly, knowing that he generally furnished reports of this
669 State, and endeavored to procure these volumes from him, and there were some, I think, above the forties—above 38, one or two volumes, possibly more; I do not now recollect—and he said that he was unable to get them; that possibly he might be able to pick them up, and from time to time I called upon him with the view of seeing whether he did get them.

Q. When did you first call upon him for that purpose?

A. I should think probably within a short time after the first. I do not recollect precisely the time, but a short time could have elapsed before I attempted to replace the library in that respect.

Q. What did he say to you when you first applied to him after the fire for these volumes.

A. On the first application, as nearly as I can recollect, it was a general talk to that effect, substantially that everything had burned up. It was not very long after the fire; how long precisely I could not say.

Q. What, if anything, did he say as to the sources from which he might be able to procure these volumes for you, if he could procure them?

670 A. He said his only reliance was in picking them up from parties who were willing to sell them through the country in different places.

Q. State whether at any time after you first applied to him in this way you made subsequent applications to him for these volumes or any of them; and, if so, when and during what years and what was said?

A. Well, I made numerous applications to him during the subsequent years up, I will say, to 1876, and I do not know—I will not say—at all times personally to Mr. Myers, because I would frequently call in his store when he was not there; but I made frequent applications.

Q. At the store to him or his employees?

A. Yes, sir.

Q. What did they tell you, in substance, at these different applications that you made for these volumes during the years I have mentioned?

A. They told me that they did not have them and could only get them by the manner I have mentioned above—
671 finding some attorney who was willing to sell them or by chance picking them up.

Q. What, if anything, was said at any of these interviews with reference to the republication of these volumes from 32 to 38, inclusive?

A. At some of these interviews—I could not state positively which; I think the early part of them, probably within a year or so after the fire—I had a conversation with Mr. Myers in reference to the prospect of these books being published, and he gave me to understand—I do not know that I can repeat his language, but the substance of it was that these books would probably not be republished; that there was not enough money in them to warrant the

expense of republication. I think he said something about the stereotype plates or some or all of them being destroyed and that the cost of reproduction would be more than would pay for the venture.

Q. What, if anything, did he say as to whether he himself would republish any of them?

A. That he would not republish them on his own account,

672 as I understood him.

Q. What reason did he give for that?

A. The reason that I have stated—that there was no profit in it.

Q. State whether you ever succeeded in getting these volumes from him. If so, when?

A. No; I never did.

Q. And you applied to him from time to time, as I recollect your testimony, down as late as the year 1876?

A. Yes, sir.

Q. During the different years from the great fire of 1871 down to and including the year 1876?

A. Yes, sir; there was one year in which I did not make one or more applications to him.

Q. Do you recollect whether at any of these interviews in connection with his statements that he could not only get them by picking them up here and there he said anything as to the price at which they could be had; and, if so, what?

A. I think he did; something from $8.00 to $10.00, and some of them—some one or two volumes that were particularly scarce—I think he ran as high as $14.00 and $15.00.

673 Q. $14.00 or $15.00 a volume for some of the scarcer ones?

A. Yes, sir. Let me see. There were one or two volumes that were particularly desired; which they were at this moment I cannot recollect; they were particularly scarce—claimed to be.

Q. Were these volumes that he claimed were particularly scarce and the price of which he said would be $14.00 or $15.00 between 32 and 38?

A. Yes, sir; one of them was, at least.

Q. State whether you ever did procure these volumes from 32 to 38, inclusive, from any source. If so, when and from where?

A. Either the 36th or the 37th; there was one volume between that I had; which one I cannot at this moment say; no, I did not get them till within the last year.

Cross-examination by Mr. LE MOYNE:

Q. You made an affidavit in this case once before, did you not?

A. Yes, sir.

Q. Did you tell all you knew about it then?

A. So far as I recollect it, I presume I did.

674 Q. Did you know as much about it then as you do now?

A. Yes, sir; quite as much, I presume.

Q. Did you not decline to leave an order with Mr. Myers for these reports at the higher price they might cost for these odd volumes?

A. I could not say positively with regard to that. I know I called for them from time to time to see if they had them.

Q. You asked whether they had them in stock, did you?

A. I asked whether they had them in stock or any prospect of getting them.

Q. But you never left an order for him to get them for you, did you?

A. My impression is that I did at one time, but I am not sure; I am not positive.

Q. Do you know that the lawyers in Chicago filled up their sets of Illinois Reports after the fire with these very volumes that you speak of?

A. I know that some of them got them; yes, sir.

Q. The volume that you say he named to you as being so
675 expensive, do you not remember that that was the 46th?

A. It was either the 45th or 46th. I know that was very expensive. I have forgotten now which one it was. It was one of these two that was very expensive, and I think one between. The 16th was a very troublesome volume to get; that I had. There was some one, I think, to the best of my recollection, between the 31st and 38th.

Q. Cannot you specify which one it was?

A. No; I do not now recollect it.

Q. Do you not remember that he told you that they were all scarce from the 16th up?

A. That would be my recollection, that he did. It is a matter of fact.

Q. As a matter of fact they could be got easily?

A. Oh, no; they could not be got easily.

Q. Then your recollection is from the 18th up they were hard to get, were they not?

A. Yes, sir.

EUGENE B. MYERS, Complainant,
vs.
BERNARD CALLAGHAN *et al.*, Defendants. } In Chancery.

676 Testimony taken before Henry W. Bishop, master in chancery, of said court, Friday, the 10th day of January, A. D. 1879.

Present: J. V. Le Moyne, Esq., solicitor for complainants; James L. High, Esq., solicitor for defendants.

GEORGE W. BECK, a witness called on behalf of the defendants, being first duly sworn, was examined in chief by Mr. HIGH, andd eposes and says as follows:

Q. State your name, age, residence, and occupation.

A. My name is George W. Beck; age, 28 years; residence, 54 Rush street, Chicago; occupation, a clerk.

Q. In what business were you engaged during the year 1877?

A. I was with Callaghan & Company.

Q. In what capacity?
A. Shipping clerk.
Q. And are you still with them?
A. Yes, sir.
A. Do you know the complainant, Eugene B. Myers, in this case?
A. Yes, sir.
Q. How long have you known him?
A. Ever since I have been in Callaghan & Company's employment.
677 Q. State whether at any time during the year 1877 you had any conversation with Mr. Myers concerning an exchange of Illinois Reports between him and the firm of Callaghan & Company.
A. I have had several.
Q. When did you first have an interview with him upon that matter, and how did it come about?
A. In March, 1877. I was sent down to Mr. Myers by A. F. Callaghan.
Q. For what purpose?
A. To try and make some arrangement with Mr. Myers to purchase his volumes, 39 to 46, inclusive.
Q. What was said and done between Mr. Myers and you at that interview?
A. I told Mr. Myers what I came for.
Q. What did you tell him?
A. That I came down to try to make some arrangement to buy his 39 to 46.
Q. Well, go on and tell us all that was said and done.
A. I wanted to know at what price he would sell them. The first proposition he made was that he would sell them at the same price that we would sell our reprints to him. That
678 offer I declined. He then said that he would sell them at the same price as we would sell Mr. Freeman's volumes, from 47 to the end of the set. That offer I returned with to the store and reported it to Mr. A. P. Callaghan, and he told me to accept that.
Q. What did you do then?
A. I went to Mr. Myers and told him we accepted that proposition, and then ordered three sets—I think it was three sets—that day.
Q. Three sets of what?
A. Of volumes 39 to 46.
Q. Were those three sets then delivered?
A. They were delivered; yes, sir.
Q. What was done afterwards, if anything, under that arrangement so made between you and Mr. Myers?
A. I several times after that went and ordered sets as we wanted them for our orders.
Q. How long did you continue to work under that arrangement; do you recollect?

A. All of March and April, I think.
Q. What then took place, if anything?
A. Then Mr. Myers declined to furnish us those volumes at that price any longer.
679 Q. Did you have any further interview with him about this matter?
A. I did some time afterwards.
Q. When, as near as you recollect?
A. Well, I don't know; it must have been in May some time.
Q. Where did that interview take place?
A. At Mr. Myers' store.
Q. What was said by both of you? Go on and tell us all about it.
A. I don't recollect precisely what was said, but the sum and substance of it was that he refused to sell us his volumes, as near as I recollect.
Q. What did you say to him upon that point?
A. I told him that his course with regard to those volumes, 39 to 46, would compel Callaghan & Co. to reprint them, as they had to have them in order to complete sets.
Q. What did he say to that?
A. He said: "If they reprint my 39 to 46 I will put a rod in pickle for them."
Q. What else was said between you?
A. There was no special conversation after that, I do not think.
Q. Did he say anything in that conversation, and, if so,
680 what, concerning the reprinting of volumes 32 to 38 by Callaghan & Company.
A. Nothing whatever.
Q. What was the fact as to whether during the year 1877 the employees of both firms, Callaghan & Company and Mr. Myers, were back and forth between each other's stores; and, if so, to what extent and how often?
A. The employees of both stores were back and forth, I might say, daily.
Q. For what purpose?
A. For the purpose of buying and selling goods.
Q. I will ask whether at any time during the year 1877, when the employees of Mr. Myers came to the store of Callaghan & Company, in the usual course of business, anything was said by them concerning the reprint of volumes 32 to 38 of Illinois Reports by way of enquiring their condition, or otherwise?
A. They invariably inquired as to what condition the reprints were in.
Q. What do you mean by they? Can you name some of these employees?
A. There was Mr. Beckwith, one of the clerks, and Mr. Myers' son—George L., I think it is.
681 Q. State, if you know, whether they were in his employ during the year 1877.
A. I believe they were in his employ; yes, sir.

Q. When they made these inquiries, as you have testified, concerning the condition of these reprints, what, if anything, was said to them by way of informing them as to the condition?

A. They were always told as to what condition they were in. When a volume would be ready we gave them all the information that we possessed at the time in regard to them.

Q. Do you recollect any particular conversation that you ever had with George Myers during that summer concerning these reprints?

A. In the conversation I had with George Myers——

Q. About what time, if you recollect any particular or special conversation?

A. That was about May, I think—the end of April or May.

Q. At what place?

A. At Mr. Myers' store we talked back and forth on the subject of reprints.

Q. What reprints?

682 A. Of 1 and 19 to 38, inclusive; we made a wager that they would not all be out on the 4th of July.

Q. Did George, at that time, make any statement to you; and, if so, what, in the nature of an objection to the reprinting of those volumes by Callaghan & Company?

A. None whatever.

Q. State whether at any time in these various interviews, of which you have testified, between yourself and Mr. Myers and between yourself and the employees of Mr. Myers, either or any of them ever made any statement to you; and, if so, what, in the nature of an objection to the reprinting of these volumes?

A. I never heard any from either of them.

Q. When did you first learn that Mr. Myers objected to the reprinting of these volumes by Callaghan & Company?

A. When this bill was filed—when this suit was commenced.

Adjourned to Jan. 15, 1879.

683 WEDNESDAY, *January* 15, 1879.

Met pursuant to adjournment.

Present: Same as before.

The direct examination of GEORGE W. BECK was resumed by Mr. HIGH as follows:

Q. You have stated that you were salesman in the employ of the firm of Callaghan & Company during the year 1877.

A. Shipping clerk and salesman.

Q. Shipping clerk and salesman?

A. Yes, sir.

Q. State whether during the year 1877 you sold or delivered any copies of the volumes of the Illinois Reports, of their reprints from 32 to 38, to the complainant Myers.

A. I did.

Q. State what volumes and mention the date of each one.

A. On September 15, 1877, I sold Illinois Reports, volume 33.

Q. And delivered it on the same day?
A. Yes, sir.
Q. Now, the next volume and the date?
A. September 21st, sold volumes 34 and 35; October 16th
684 I sold volume 35, and November 7th, volume 36.
Q. Were all these volumes of the reprints by Callaghan & Co. in contest in this case?
A. Yes, sir.

Cross-examination by Mr. LE MOYNE:

Q. You say you were sent by Callaghan & Co. to Mr. Myers to make an arrangement by which you could purchase 39 to 46 or copies of them. Give the date of that arrangement.
A. That was in March.
Q. What day in March?
A. I do not recollect the exact date.
Q. Have you any way of fixing it?
A. I can fix it by the date of the purchase—by turning up my bills of the day we purchased the sets.
Q. Were the first sets under this arrangement bought of Myers the same day that the arrangement was made?
A. The same day the arrangement was perfected; yes, sir.
Q. How long before that was it that the first conversation took place between you and Myers on that subject?
685 A. My recollection is that there was an interval of a day. The first day that I went to see Mr. Myers we did not come to any arrangement, and I think it was the next day that we settled about the price.
Q. In the conversation between you and him and his employees in regard to the reprints do you mean to swear that the volumes—the number of the volumes—of the reprints was specified in those conversations?
A. No, sir.
Q. It was a general talk between you about such volumes as Callaghan & Co. were reprinting, was it?
A. Yes, sir.
Q. There was no other designation of them except your reprints or the reprints of Callaghan & Co.?
A. Just our announced reprints.
Q. At the time that you had the conversation referred to with Mr. Myers, in which you say he proposed to give you volumes 39 to 46 at the same price that you would furnish him your reprints, what reprints had Callaghan & Co. at that time?
A. Well, I cannot say what volumes we had out at that time; my recollection is not good enough for that.
Q. Do you remember any that they had out?
686 A. I cannot say positively what volumes we had out at that time.
Q. Did you not have volumes 2 to 18 then out in reprints?
A. Yes, sir; the Underwood edition.
Q. Did you not have volume 19?

A. Yes; I am very certain volume 19 was ready at that time.
Q. Did you not have volume 31?
A. I think so.
Q. Now, can you remember any other of the reprints that you then had?
A. There was several volumes out between 19 and 38, but the exact volume I cannot tell.
Q. Now, did you have any at that time above 31?
A. I think not, but I could not say positively.
Q. Do you not know that 32 was the first volume that Callaghan & Co. had out of the volumes claimed by Myers?
A. I think it was the first that was issued; yes, sir.
Q. Do you not know that that volume was not got out by Callaghan & Co. until about the first of June?
A. Which volume?
Q. 32.
A. I do not know, sir. I do not recollect when it was issued.
687 Q. Nor do you recollect the date of the issue of any of the volumes by Callaghan & Co. claimed by Myers?
A. No, sir; if you tie me down to any specific date I could not.
Q. At the time Mr. Myers told you if Callaghan & Co. undertook to publish his volumes and he said if they published them he would put a rod in pickle for them do you undertake to say that he then undertook to enumerate the volumes that he said he would prosecute them for publishing?
A. Yes, sir.
Q. You swear that he then named 39 to 46?
A. Myers, 39 to 46.
Q. You are positive about that?
A. Yes, sir.
Q. That was the conversation in his store?
A. Yes, sir.
Q. Who was present?
A. I think no one but ourselves.
Q. Do you not remember that Mr. Beckwith was there?
A. Mr. Beckwith was in the store, I think, but he was not present at the conversation.
Q. Was not Miss Burby there, the book-keeper?
A. Not at the conversation; she was probably in the store.
Q. Was not George Myers in the store there?
688 A. I think he was, but I do not think either of them heard the conversation; he was in the back end of the store, and I presume they did not hear.
Q. Now, was that the only conversation which you had in which you heard Myers say he would prosecute them or assert his copyright claim?
A. It is, sir.
Q. You never, on any other occasion, heard him say that he would prosecute Callaghan & Co. for the republishing of any of his volumes except on that one occasion?

A. I never did; no, sir.
Q. That you swear to positively?
A. Yes, sir.
Q. Did you ever ask him if he was willing he should republish any of his volumes?
A. I never did. I never had any authority to do so.
Q. Did you have anything to do with the negotiation between them in regard to his copyright?
A. No, sir; I never did.
Q. When did you have any knowledge of any negotiation on that subject?
A. I was aware that negotiations were going on.
Q. As a matter of hearsay?
689 A. As a matter of hearsay in the store, as it would come up as a matter of business.
Q. Did you hear the matter discussed in his store?
A. No, sir; I think not.
Q. You only heard it in the store of Callaghan & Co. that such negotiations were going on between Myers and your firm?
A. Yes, sir; I was aware that they were going on.

Redirect examination by Mr. HIGH:

Q. You spoke in your direct examination of a wager that you had with George Myers as to the time when Callaghan & Co.'s reprints should be out?
A. Yes, sir.
Q. Were any particular reprints mentioned in that wager between you and George?
A. Just our announced reprints; that was the understanding.
Q. By announced reprints what did you mean?

Solicitor for the complainant objected to any examination of the witness upon this subject as not proper re-examination, and
690 also objected to the witness stating his understanding.

Q. With reference to what volumes was this understanding had?
A. Volumes 1 and 19 to 38.

GEORGE W. BECK.

Subscribed and sworn to before me this 15th day of February, A. D. 1879.

——— ———,
Master in Chancery of the Circuit Court of the United States for the Northern District of Illinois.

EUGENE B. MYERS, Complainant,
vs.
BERNARD CALLAGHAN *et al.*, Defendants. } In Chancery.

Testimony taken before Henry W. Bishop, master in chancery of said court, Tuesday, the 21st day of January, A. D. 1879.

Present: J. V. Le Moyne, Esq., solicitor for complainant, and James L. High, Esq., solicitor for the defendants.

691 EUGENE B. MYERS, called as a witness on behalf of the defendants, being first duly sworn, was examined in chief by Mr. HIGH, and deposes and says as follows:

Q. You are the complainant in this case, I believe?

A. Yes, sir.

Q. State whether from time to time, since the great fire of 1871, you have published and issued to the trade and profession catalogues of your publications and general law catalogues.

A. I have occasionally.

Q. How many of them, as near as you recollect, have you issued since the fire of 1871, and in what years?

A. I do not remember how many different catalogues.

Q. What is the usage generally in the law-book trade with reference to issuing such catalogues from time to time?

A. Well, we prepare a catalogue, have it stereotyped, and make it last as long as possible.

Q. And then make such corrections and revisions as are necessary from year to year, I suppose?

A. Well, we change the date on the title page; I do not
692 think I have had a new catalogue for three or four years.

Q. You mean an entirely new one?

A. Yes, sir; I do not remember exactly how long.

Q. Are any changes made in the body or substance of it from year to year?

A. We sometimes insert the price. Where a book has been in the press and is issued we add the price, soldered to the plate.

Q. State whether you do from year to year, as these catalogues are reissued, make such changes or modifications as are necessary to show the existing state of the books at that time.

A. Well, I have not been particular about that. There are so many catalogues in the country that a lawyer desiring information will refer to most any of them. I do not find it necessary to publish and send to the profession new catalogues very often.

Q. What use have you made of these catalogues, in the course of your business, from time to time, since the fire?

A. Where I have been written to for a catalogue I have mailed it to them.

693 Q. And they are given to lawyers, I suppose, visiting your place of business, who request them?

A. Yes, sir,

Q. They are furnished generally to the trade, too, are they not?

A. We never furnish them to the trade.

Q. You mean that they are intended for the profession instead of for the trade?

A. Generally that is the intention.

Q. Would you be able to recognize any of your catalogues if produced?

A. I think so.

Q. Look at the printed catalogue which I now show you, purporting to be a catalogue of your publications, and state what that is.

A. This seems to be a condensed catalogue of law books, bearing date 1873, while temporarily at 393 Wabash avenue.

Q. Is it your catalogue issued for that year in the course of your business?

A. Yes, sir.

Defendants' counsel offers in evidence the catalogue in question, and the same is marked "Defendants' Exhibit H."

Q. Look at the catalogue now shown you, purporting to be
694 a catalogue of your publications, and state what that is.

A. That is a catalogue dated 1874.

Q. Issued by you in that year?

A. Not specially for that year; it was issued in that year and stereotyped in that year.

Q. It was your catalogue, issued in the course of your business at that time or about that time?

A. Yes, sir.

Defendants' counsel offers in evidence the catalogue referred to, and the same is marked "Exhibit I."

The WITNESS: It is the same plates as the catalogue of 1873, with a supplement attached embracing abbreviations of American Reports and new books.

Q. Look at the catalogue which I now show you, purporting to be a catalogue of your publications for the year 1875, and state what that is.

A. It seems to be the same catalogue with a new cover.

Q. State whether it was your catalogue, used and issued by you in your business for the year 1875 or about that time.

695 A. It apparently was.

Defendants' counsel offers in evidence the catalogue in question, and the same is marked "Defendant's Exhibit J."

Q. Look at the catalogue which I now show you, purporting to be a catalogue of your publications for the year 1877, and state what that is.

A. A catalogue dated in 1877.

Q. State whether it was used or issued by you in your business for that year.

A. I presume it was issued in the fall of 1876 or winter. It was customary sometimes to date them ahead. If they were published in the fall of the year we dated them ahead; it is a common thing among publishers in issuing books.

Defendants' counsel offers in evidence the catalogue in question, and the same is marked "Defendants' Exhibit K."

Q. State whether you issued any catalogues for the years 1872 or 1876.

A. I am under the impression that the catalogue of 1873 is
696 printed from the plates made in 1872, with simply a new cover.

Q. So that your catalogue for 1872 was the catalogue as here shown of 1873, with the exception of the cover; that is your present impression?

A. That is my impression—it is a good while ago—probably with the addition of some advertisements following the index.

Q. So that the only change in the catalogue of 1873 from that of 1872, as you now recollect, would be in the cover and in the advertisements in the back following the index?

A. I connot remember so long ago as that; there may have been other changes made.

Q. But that is your present impression?

A. Yes, sir; without a careful examination of them.

Q. Now, state whether you issued any catalogue for the year 1876.

A. I do not remember whether I did or not; my impression is that I did not, because the last exhibit bears the date of 1877. It was probably issued in the winter of 1876, '77, or the fall of 1876.

Q. Will you make a search among your books and papers or elsewhere for the purpose of ascertaining whether you did issue any catalogue for the year 1876?

697 A. Yes, sir; with pleasure. I do not think there were any.

Q. And also produce, if you can find it, your catalogue for the year 1872.

A. Yes, sir.

Adjourned to two o'clock p. m., January 25, 1879.

JANUARY 25, 1879.

Met, pursuant to adjournment, at two o'clock p. m.
Present same as before.

The direct examination of the witness was resumed by Mr. HIGH as follows:

Q. State whether since my examination of you, some days since, you have made any search for other catalogues than were then produced, issued by you between the years 1871 and 1877.

A. I have.

Q. Have you been able to find any other catalogues during those years than the four which have been produced and identified?

A. I have not.

Q. Are you now satisfied that those are the only catalogues that you issued during the period in question?

A. I think those were all, although I would not be positive.

698 Q. You said something when you were examined by Mr. Le Moyne originally as a witness in your own behalf as to

procuring certain volumes between 32 and 38 after the great fire of 1871. Will you state again from what source those were procured and what particular volumes between 32 and 38, inclusive?

A. They were obtained from Albany, New York.

Q. From whom?

A. Weed, Parsons & Co.

Q. How did they happen to be with Reed, Parsons & Co.?

A. They were shipped down there previous to the fire.

Q. In what shape or condition?

A. Unbound.

Q. For what purpose?

A. To be bound.

Q. What volumes between 32 and 38 were shipped to Weed, Parsons & Co. to be bound?

A. As I recollect, volumes 34, 36, 38, and 46; that is my recollection now.

Q. Did you get any other copies of either of those volumes 34, 36, or 38 from Weed, Parsons & Co. than those which were shipped to them before the fire to be bound?

A. I think not.

699 Q. How many copies of each of the volumes 34, 36, and 38 had you shipped to them to be bound before the fire?

A. I am unable to answer; quite a large number.

Q. Was it not ten copies of each volume?

A. More than that.

Q. How much more?

A. I am unable to answer.

Q. But whatever copies you had so shipped to them formed the only source of supply of, as I understand, from which you afterwards obtained them after the great fire of 1871, except as you obtained them at second hand?

A. I had a good many volumes from Springfield.

Q. From whom did you obtain them?

A. Various parties.

Q. Will you mention some of those parties?

A. I think I had some from Mr. Freeman, some from the Journal Company, from Mr. Loutrell and Mr. Ludlam.

Q. Were not those volumes that you thus obtained from Springfield obtained at second hand?

A. Some second hand, some fresh.

Q. Were there any of them between 32 and 38, inclusive?

A. Yes, sir.

700 Q. Do you know from what source the different gentlemen whom you have named obtained these volumes in Springfield to supply you?

A. I do not. I think that some of the volumes, between 32 and 38, were printed in Springfield—stereotyped there.

Q. Originally, you mean?

A. Originally for me. I think that they probably printed more than the original contract called for and had some left.

Q. Who was the Loutrell whom you have mentioned furnishing some of these volumes from Springfield?

A. I never knew him. I never met him, personally, until some time after the transactions with him.

Q. What connection, if any, did he have with the State?

A. I could not tell you. I think he was in the Governor's office. I have heard so.

Q. As private secretary?

A. I do not know that.

Q. Do you mean that these gentlemen in Springfield sent you these volumes from some general source of supply or occasional volumes at second hand, as you might need them to fill an order?

A. I have no knowledge as to where they obtained their supplies.

Q. But you obtained them from them occasionally as you needed them to fill an order?

701 A. Well, they were offered to me and I bought them.

Q. From time to time, as you needed them to fill orders?

A. Before I needed them.

Cross-examination by Mr. LE MOYNE:

Q. In Exhibit K, offered by defendants, being one of your catalogues, I observe on page 33, which contains the Illinois Reports, the price is not given to volumes 19 to 46 of the Illinois Reports. State why that so appears in the exhibit.

A. It was the custom of all law-book dealers, where they were not able to supply all the volumes or where certain volumes are running low, to omit the price. As it states at the head of this table, "The works to which no price is affixed are of uncertain values." That is the custom of all dealers, even the defendants' catalogues show similar advertisements.

Q. In the other exhibits, Exhibit J, page 13, Roman XIII, state whether the Illinois Reports offered of volumes 19 to 46 are described similarly?

A. They are described a little different.

Q. Well, what is the difference?

A. Well, the price of 19 to 38 is left blank. The price of 39 to 46, eight volumes, is stated at six dollars a volume, $48.00.

702 Q. State how the volumes from 19 to 38 are described in each of the several exhibits.

A. It is the same in the catalogue, marked "Exhibit I;" it is printed there "Illinois Reports, 19 to 46, 28 volumes;" price omitted.

Mr. HIGH:

Q. From what page of Exhibit I are you now reading?

A. Page 33.

Mr. LE MOYNE:

Q. Now, read the pages of each of the exhibits in which it appears.

A. It is the same on page 33 of Exhibit H.

Q. On page XIII of Exhibit J it reads, "Illinois Reports, 19 to 38," price omitted. On page 48 of Exhibit K, I find "Illinois Reports, 19 to 38, 20 volumes," price omitted.

—. —.

Q. Is that the same explanation you have given in regard to the other and part of this catalogue, too?

A. The same explanation.

Q. Have you one of the defendants' catalogues?

A. I have.

(Witness produces catalogue.)

Q. Look at the book shown you and offered as an exhibit and state what it is.

A. This is a catalogue published by Callaghan & Co., dated August, 1873.

703 Q. State if in that catalogue the Iowa Reports are included. If so, how? Is the price fixed? If so, state how they appear there.

A. On page X they advertise the Iowa Reports—Green's Reports—four volumes, price, blank; Withrow's Reports, 13 volumes, price, blank.

Q. State whether there is any explanation in that book as to why the prices were left blank; if so, read it.

A. (Reading:) "The works to which no price is affixed are out of print and are of uncertain value."

Q. On what page does that notice appear?

A. On page 75; following that, on page 83, the Illinois Reports are stated in the table with prices left blank to all of them. On page 84, in the table of Iowa Reports, the price of Green's Reports, Clark's Reports, and Withrow's Reports are left blank.

Q. State whether the prices are given on that page of the other Iowa Reports besides those.

A. The price of Stiles' Reports is given, 22 to 34, Iowa, $65.00.

Complainant's counsel offers in evidence the catalogue referred to, and the same is marked as an exhibit in the case.

Q. When was the catalogue R issued.

A. The matter for this catalogue was prepared in the month-

704 of August and September and placed in the hands of the printer in the month of October, and was stereotyped, printed, and issued in the month of November, 1876, and post-dated 1877 because it was so near the end of the year. That is customary.

EUGENE B. MYERS, Complainant,
vs.
BERNARD CALLAGHAN *et al.*, Defendants. } In Chancery.

Testimony taken before Henry W. Bishop, master in chancery of said court, Monday, the 3rd day of Feb-uary, A. D. 1879.

Present: J. V. Le Moyne Esq., solicitor for the complainant, and James L. High, Esq., solicitor for defendants.

Clark.

SHELDON A. CLARK, a witness called on behalf of the defendants, being first duly sworn, was examined in chief by Mr. HIGH, and deposes and says as follows:

Q. State your name, age, residence, and occupation.

A. Sheldon A. Clark; age, 32; my occupation is law-book seller and publisher.

Q. Are you one of the defendants in this cause?

A. I am.

705 Q. And a member of the firm of Callaghan & Company?

A. Yes, sir.

Q. How long have you been a member of that firm?

A. Since July 1, 1875.

Q. How long have you been engaged in the law-book business in different capacities?

A. Since February 1, 1871, I have been in this house.

Q. Continuously?

A. Continuously.

Q. What has been the condition of the market, with reference to the Illinois Reports from 32 to 38, inclusive, since the great Chicago fire of 1871 and down to the summer of 1877?

A. Volumes 19 to 38?

Q. 32 to 38.

A. Well, sir, volume 19 has been out of print ever since I have been in the book business.

Q. Well, I do not care about 19—32 to 38?

A. They have been out of print and scar-e up to the time of the republication by us—very scar-e.

Q. At what price have the volumes averaged during the period in question?

A. Well, sir, the prices averaged a good deal in proportion to the number of volumes a man purchased. Buying them separate from sets, they have sold all the way from $7.50 to $15.00 a volume.

706 Q. From what source has it been possible to obtain them during the period in question?

A. Only as they were picked up in odds and ends and in second-hand —.

Q. State whether, at any time soon after the fire of October, 1871, you had occasion to visit Mr. Myer's place of business with reference to these volumes or pricing them; if so, when, and what occurred?

A. I remember one or two occasions, after the fire, while Mr. Myers and ourselves were on Wabash avenue, of having dropped in his place when I wanted to make up sets—a few odd volumes—and I would go in there and look over his stock and get his price on what volumes he had.

Q. Including these volumes in question?

A. Including these volumes in question. Those volumes that he had that were out of print, those volumes were the most valuable.

Q. Do you mean by that to include volumes 32 to 38?

A. I mean odd volumes that came in of the volumes that were out of print, after the fire; they were second hand. I never saw any new books of these volumes until our republication.

Q. On these occasions, when you visited Mr. Myer's store, after the fire, with whom did you talk, and what was said concerning these volumes?

707 A. I remember on one or two occasions of having dropped in there when we had sold sets and lacked some of these volumes to make them up, of having dropped in there and talking with Mr. Beckwith.

Q. Who was Mr. Beckwith?

A. He was a salesman in Myers' employ.

Q. What was said on these occasions by you and Beckwith concerning these volumes?

Objected to.

A. I remember that Mr. Beckwith gave me prices upon those books, and they were always extravagant prices, and that, as an argument in favor of selling, he always used the point that they were scarce and very rare. I remember two or three different occasions dropping into their place on Wabash avenue after the fire.

Q. State whether he said anything on those occasions, and, if so, what, with reference to those volumes being out of print.

Objected to.

A. Yes; he always put his price on the basis that they were scar-e; that they could get almost any price they asked for them.

Q. What was the peneral knowledge or understanding in the law-book trade during the period in question, with reference to volumes 32 to 38, as to being in print or otherwise?

Counsel for the complainant objected to the witness testi-
708 fying as to the knowledge of anybody but himself.

Q. (Continued.) And what was your knowledge on that point?

A. That they were out of print and scar-e—very scar-e.

Q. How were you engaged during the year 1877, with reference to the firm of which you are a member?

A. I was engaged mostly as a salesman—that is, my occupation was a salesman on the road.

Q. What do you mean by that?

A. Soliciting orders through the profession of the city.

Q. In what part of the State did your duties take you in that occupation?

A. Well, from the middle of January to the middle of March, 1877, my whole time was given in this State soliciting orders for the reprints.

Q. What reprints do you mean?

A. Reprints volume- 1 and 19 to 46, inclusive.

Q. After the middle of March, 1877, did you have occasion to travel through the State any in connection with your business?

A. Yes; more or less, and have ever since up to the present time.

Q. Look at the circular now shown you, which Mr. Myers has testified in the circular which was issued to the law-book trade about the middle of March, 1877—and he has also testified that he sent a similar circular about the same time to the legal profession through this State—and state when you first saw that circular (handing witness paper).

709

A. I never have seen that circular before in my life. I have no knowledge of ever having seen it.

Q. When did you first hear of any such circular?

A. I never heard of it until I read the affidavit of Mr. Myers in this cause.

Q. The affidavit that was filed on the 12th of March, 1878, and used on the motion for an injunction?

A. Yes, sir.

Q. State whether you ever saw any circular or like circular issued to the members of the legal profession by Mr. Myers as he has testified.

A. I have seen circulars repeatedly from Mr. Myers, but I have never seen a circular denouncing the reprints of those volumes up to that time.

Q. Did you ever hear of any such circular issued to the members of the legal profession announcing his reprints of volumes 32 to 38?

A. Not until that time; no, sir.

Q. Until you first heard of it in his affidavit?

A. No, sir.

Q. State whether in any way or manner, directly or indirectly, prior to reading the affidavit of Mr. Myers in which this circular is referred to you had received any knowledge or information concerning such circular or circulars.

710

A. I never had.

Q. State whether in addition to traveling through the State soliciting orders from lawyers in the way you have testified during the year 1877 and since you have also come into contract with lawyers or judges in any other way; if so, in what way, and to what extent?

A. I have repeatedly come in contact with lawyers here; in fact, after the fire up to the first of April I was engaged entirely in soliciting orders around the city here.

Q. First of April; what year?

A. 1872, and I have off and on since that time.

Q. During the year 1877 when you were not travelling through the State, as you have testified, did you come into contact with the legal profession to any extent; and, if so, what way?

Q. When I was here in the store I have come into contact with them every day, more or less; my time was not occupied in traveling in this State alone; I traveled outside the State.

Q. When did you first learn, and how, that Mr. Myers contem-

plated printing either of the volumes from 32 to 38, inclusive, of the Illinois Reports?

A. Not until after this suit was begun; not those volumes.

Q. I do not think you understand the question. When did
711 you first learn and how that Mr. Myers contemplated reprinting either of the volumes from 32 to 38, inclusive, of the Illinois Reports?

A. The first I heard of it was—I never heard that he contemplated reprinting any of them, except that I heard of 37 and 38 about the time they were published. That is all the information I ever heard of it.

Q. About the time he published his 37 and 38?

A. Yes, sir; about the time he reprinted them or about the time they were in process of reprinting.

Q. State whether at any time prior to the filing of the bill in this cause Mr. Myers or any one for him or in his behalf ever made any objection or statement to you of any kind against the republication of volumes 32 to 38 by the defendants, Callaghan & Company.

A. Well, not to my knowledge, no; not until after we had got nearly all those books produced—I guess all produced.

Q. State whether at any time prior to the filing of the bill in this case Mr. Myers or any one for him or in his behalf ever made any statement to you concerning your alleged infringement of his copyrights by reason of your republication of volumes 32 to 38.

A. No, sir.

Cross-examination by Mr. LE MOYNE:

Q. Did you ever have any conversation with Mr. Myers
712 about his copyrights of the Illinois Reports?

A. Myself?

Q. Yourself personally.

A. No, sir; I never had.

Q. Were you in his store in the fall of 1876 when you found fault for his not letting you have some books that he had—the Illinois Digest?

A. I presume I was in his store.

Q. Do you remember being in his store?

A. Yes; I recollect of having been in there and having some words with Mr. Myers.

Q. And that was because he did not choose to sell you certain books that he had, was it not?

A. That was because—I do not remember what the books were, but they were not Illinois Reports.

Q. I am not asking you what they were. You were then finding fault with Mr. Myers and some words ensued between you and him because he would not let you have certain books that you wanted that he had; was not that the case?

A. I think very likely some words may have passed between us.

Q. And he told you to get out of the store and never come back again, did he not?

A. No, sir.

Q. He did not?
A. No, sir.
Q. Have you ever been back since?
A. Have I?
Q. Yes; in his store?
A. Yes, sir.
713 Q. Did you ever see this circular before to-day?
A. No, sir; I never have.
Q. You did not see it when it was attached to the affidavit?
A. No, sir; it was not attached to the affidavit when I saw it.
Q. You did not see it when it was used before Mr. Bishop?
A. No, sir.
Q. All you know about it is that you never saw it?
A. Yes, sir; I know it from the fact that I traveled from the 17th day of January to the 17th of March soliciting for these books, and if there had been a circular of that kind distributed I should have seen it.
Q. There is no doubt — it?
A. No doubt about it at all.
Q. You are as positive about that as of anything else you have testified to?
A. I am as positive about it, because I was in contact with them and I have conversed with them.
Q. In contact with whom?
A. With the leading lawyers of the State. I was taking orders for these reprints.
Q. When did you first learn that Mr. Myers was reprinting any of them?
A. The first I heard of it he had one of the volumes nearly through the press.
Q. What condition was it in at that time?
A. I do not remember.
714 Q. It was not out?
A. I only remember that some party said that Myers had got one of the volumes nearly out. I could not swear which one it was at the time.
Q. You cannot fix the date of that, can you?
A. I cannot fix the date; my attention was called to it after I came into the store off a trip. At that time the book was nearly through. They saw it or found out that the book was in preparation through some of the printers. I learned of it through the store.

Mr. HIGH:

Q. In your store?
A. In our store that Myers was reprinting one of those volumes.

Mr. LE MOYNE:

Q. You have no memorandum or anything to fix the date by?
A. No, sir; I have no recollection as to the date. I know it was late. I think we had the books out at the time or nearly out.

Q. The same volumes?
A. Yes, sir.
Q. That is your recollection?
A. That is my recollection. I might say, if you will allow me to qualify my statement in regard to the reprinting, when we first made the announcement we made the announcement of volume I of Breese and 19 to 38, inclusive; those are the first volumes we made the announcement of. My whole attention at the time
715 was given in this State, and I never heard Mr. Myers' name mentioned in connection with those reprints. I frequently enquired the prices and found they were scarce. I have paid as high as $10.00 a volume and $7.50 repeatedly during the period that these books were out of print.

EUGENE B. MYERS, Complainant,
vs.
BERNARD CALLAGHAN *et al.*, Defendants. } In Chancery.

Testimony taken before Henry W. Bishop, master in chancery of said court, Tuesday, the 4th day of February, A. D. 1879.

Present: J. V. Le Moyne, Esq., solicitor for complainant, and James L. High, Esq., solicitor for the defendants.

SHELDON A. CLARK was recalled on behalf of the defendants, and being examined in chief by Mr. HIGH, deposes and says as follows:

Q. In reading over the report of your testimony as taken yesterday by the short-hand reporter, I find this question and answer: "Q. State whether at any time prior to the filing of the bill
716 in this case Mr. Myers or any one for him or in his behalf ever made any objection or statement to you of any kind against the republication of volumes 32 to 38 by the defendants, Callaghan & Company? A. Well, not to my knowledge; no, not until after we had got nearly all these books produced—I guess nearly all produced." Is that what you meant to say or what you meant to be understood as saying in answer to that question?
A. What I meant to be understood was that I never had any knowledge or information of any objection on his part until after the filing of this bill—until I read the bill at the store.
Q. Where were you when the bill was actually filed?
A. I was on the road.
Q. Travelling for the house?
A. Yes, sir.
Q. How did you first learn that the bill had been filed?
A. I learned it a day or two after the bill was filed, when I came into the store, the first thing in the morning.
Q. In what way did you learn it?
A. The bill was handed to me by some one in the office—the official notice of it.
Q. Prior to the bill, then, being handed to you, or a copy of the bill, had you received any knowledge or intimation in any way or

form, directly or indirectly, that Mr. Myers objected to the
717 reprinting of volumes 32 to 38 by your firm?

A. I never did.

Cross-examination by Mr. LE MOYNE:

Q. What do you mean by saying that you did not hear of this until after the books were reproduced?

A. Well, I meant to say that I never heard of it until the bill was filed.

Q. What did you mean by saying until after the books were reproduced. The filing of the bill and the reproduction of the books were not associated together in any way, were they, in your mind?

A. Well, as to the date of the republication, that I could not state.

Q. Do you know when your books were reproduced?

A. I could not tell you exactly; I do not know exactly when; I could not tell you the date of the reproduction; I was away most of the time.

Q. Were you intending to swear that while the books were being produced you had not heard the objection; was that what you meant?

A. I meant to say until after they were reprinted. He made no objection until after they were reprinted—until the filing of the bill. That was the first intimation that I had of any intention on Mr. Myers' part of making any objection.

718 Q. Well, now, when you said that you had not heard of any objection until your books were reproduced you did not then know when those books had been reproduced?

A. I could not state the dates of republication of each volume, because I was away most of the time.

Q. And you don't know, then, whether the books were reproduced before the bill was filed or not, do you?

A. I think they were.

Q. Are you sure of that, that they were all out then?

A. Yes, sir; they were; that is my recollection; at any rate, I had no knowledge. I could not say as to the date of the publication of the books, but I know that I had no information or knowledge of the matter until I was handed the bill in the store.

Q. Did you make any effort to get any information on the subject?

A. I did not. I was in a position to get information if there had been any such information broadcast, I suppose, as well as anybody.

Q. That is, you were in a position to pick up reports, you mean?

A. No, sir; I was in a position to have had the information, I suppose, likely as quick as anybody else, except they had been
719 notified directly; I might have been away in that case.

Q. Well, I ask the question as to whether you made any effort to get information on the subject; if so, what efforts did you make—upon the subject of Mr. Myers' consent or objection to the publication?

A. Whether I did personally or not?

Q. Well, I am expecting you to testify only from your personal knowledge; anything more than that would be improper.

A. Personally I did not, because I did not have the matter in charge.

Q. I understand, then, that you mean that you have no knowledge as to whether Mr. Myers objected or consented to the publication by Callaghan & Company of the books claimed by him; is that what you mean?

A. I have no knowledge that he objected to it.

Q. Had you any knowledge that he consented to it; if so, what?

A. The mere fact that he did not notify us or object to it would be evidence, in my mind, that he permitted it to — done by his consent.

Q. I am not asking you for any inferences or conclusions in your mind; I am asking you as to notice or knowledge. Can you answer that question?

A. Mr. Myers knew that we were reprinting these books.

720 He never gave us objection not to do the work. We advertised these broadcast through the State with a circular, and he could not help but know it, and he never notified us in any way, shape, or manner, or intimated that it was against his consent.

Q. I do not think you are answering my question, so I will ask the reporter to repeat it to you and see if you can give an answer to it. (Question repeated.)

A. I understood from the members of my firm that he did not object to it.

Q. Is that all the knowledge you have on the subject? If not, state it.

A. That is.

Signature of witness waived by agreement of counsel.

Counsel for defendants states that, with the exception of the documentary evidence relating to the copyright entries and title and with the exception of one or two witnesses, whom he desires to examine upon the question of complainant's circular, if he shall reach that branch of the case before complainant's counsel has proceeded to that extent in rebuttal, he rests his case.

721 And thereupon defendants read in evidence the depositions of Wilson L. Mead and Nathan W. Baldwin, as follows:

In the Circuit Court of the United States for the Northern District of Illinois. In Chancery.

EUGENE B. MYERS, Complainant,

vs.

BERNARD CALLAGHAN *et al.*, Defendants.

Testimony taken before Henry W. Bishop, master in chancery of said court, Monday, the 10th day of February, A. D. 1879.

Present: J. V. Le Moyne, Esq., solicitor for complainant, and James L. High, Esq., solicitor for the defendants.

WILSON L. MEAD, a witness called for the defendants, being first duly sworn, was examined in chief by Mr. HIGH, and deposes and says as follows:

Q. State your name, age, residence, and occupation.

A. My name is Wilson L. Mead; I am 30 years old; occu-
722 pation, law-book seller; residence, Chicago.

Q. How long have you been engaged in the law-book business?

A. Nine years.

Q. Are you now and were you during the year 1877 in the employ of the firm of Callaghan and Company, the defendants?

A. I was.

Q. In what capacity?

A. I was soliciting orders for law books.

Q. During the year 1877, where did your duties as such salesman call you?

A. I spent most of that season in the city of Chicago.

Q. What were you doing?

A. Soliciting orders for Callaghan & Company's publications.

Q. Did you have occasion during that year, in your business or employment with them, to go about among the law offices in this city; if so, to what extent?

A. That was my business exclusively.

Q. Soliciting orders among the lawyers in this city?

A. Yes, sir.

723 Q. State whether, among other orders that you solicited during that year from lawyers in this city, you canvassed for orders for the reprint of Illinois Reports then being published by the defendants, Callaghan & Company?

A. I did.

Q. Mr. Myers has testified in this case that about February or March, 1877, he issued to the law-book trade a printed circular, a copy of which I now show you, and at the same time he issued to the legal profession throughout the State of Illinois a similar circular, announcing, as he says, his reprint of volumes 32 to 38 of the Illinois Reports. State whether you ever saw any such circular until to-day.

A. I did not.

Q. Did you ever see any circular of a similar import announcing in any way his intention to reprint those volumes of Illinois Reports until I showed you this circular to-day?

A. I did not.

Q. State whether you ever heard, in any way, of such a circular purporting to have been issued by Mr. Myers, until you heard
724 of it in his affidavit that he filed in this cause about a year ago.

A. No, sir.

Q. State whether prior to the filing of the bill of complaint in this cause you ever heard in any way, directly or indirectly, and, if so, how, that the complainant made any objection to the republication of volumes 32 to 38 of Illinois Reports by Callaghan & Company?

A. No, sir.

Q. How long have you been canvassing or soliciting orders for law books—how many years?

A. Nine years.

Q. Do you mean you have been engaged as solicitor or canvasser during the most of that time?

A. I began in 1870; yes, sir.

Q. And have been engaged in that business ever since?

A. Yes, sir.

Q. What, in your opinion, would have been the probability of your attention being called to such a circular as this by lawyers in this city or State if they had received such a circular?

725 A. The probability is that I should have known it from the high price of the Illinois Reports and the fact that they had remained out of print so long, and then my soliciting orders for them.

Q. Soliciting orders for the defendant's reprints?

A. For the defendant's reprint. It would have been very likely that if there was anything of this kind in existence it would have been thrown in my face; they would have used it as a lever. We were asking what some at that time called an exorbitant price for the reprint.

Q. State, if you know, generally what was the condition of the market with reference to supplying these volumes 32 to 38 of Illinois Reports from the time of the great Chicago fire of 1871 down to the year 1877.

A. Well, 32 to 38, did you say?

Q. Yes; the question only has reference to those.

A. They were supplied in the shape of second-hand books.

Q. Was it possible to get them new, or could they only be picked up at second hand?

A. There was no market where we could obtain them new, that I know of.

726 Cross-examination by Mr. LE MOYNE:

Q. During the year 1877 were you engaged all the time in this city?

A. No, sir.

Q. You were out through the country, were you, soliciting orders?

A. Some, in the summer season. I was here nearly all the summer.

Q. You say you never saw any circular of that nature?

A. No, sir.

Q. Never saw any announcing the reprint or offering them for sale?

A. No, sir; offering them for sale as a reprint.

Q. At any time?

A. At any time.

Q. Until now?

A. Until now. Oh, yes, but not this circular until now.

Q. Any similar circular. Did you see during that time any similar circular?

A. I have seen in the last year—do you mean up to that time?

Q. I mean during the year 1877; up to December, 1877, do
727 you mean to testify that you had seen no circular announcing the reprint of any of the volumes from 32 to 38 or offering them for sale by Mr. Myers?

A. I cannot just say whether it was December or not, but it was all during the season that I was here—in the summer and fall that I was in the city soliciting.

Q. You can remember whether you saw any or not, can you not?

A. I can remember that I did not.

Q. Any circular of any kind?

A. Yes, sir.

Q. To that effect?

A. Yes; circular or advertisement.

Q. Look at the circular now shown you and say if you ever saw that before or a copy of it; if so, when?

(Handing to witness paper marked "Exhibit A" to deposition of W. L. Mead.)

A. I do not recognize this as anything that I have seen.

Q. Can you swear whether during the summer of 1877 at any time you saw a copy of that circular?

A. Yes, sir; I can swear that I have not.

Q. Look at the postal card now shown you, marked "Complainant's Exhibit B," and state whether you saw that at any time during the year 1877.

A. I did not.

(The signature of the witness *of* the above deposition was waived by agreement of counsel.)

728 COMPLAINANT'S "EXHIBIT A" to Deposition of W. L. Mead.

To the trade. E. B. Myers' publications. Chicago.

Barber's Common-Place and Brief Book, quarto, half Russia	4 00	net.
Blickinsderfer's Law Students' Review, 2 vols.		
" " " " leatherette	3 50	"
" " " " sheep	4 00	"
" " " " morocco, gilt	5 00	"
Bassett's Criminal Pleading, sheep	4 50	"
Cities and Villages, Act for Incorporating	50	"
Court Rules, Practice in Chicago, 8vo., sheep	1 50	"
Farren's Bill in Chancery, new edition, preparing	3 00	"
Haines' Treatise for Justices of the Peace, 8vo.	7 00	"
Haines' Township Organization Laws, paper	2 00	"
" " " " half sheep	2 50	"
" " " " sheep	3 00	"
Hill's Chancery Jurisdiction and Practice, 2 vols.	10 00	"

Hill's Common Law Jurisdiction and Practice, 2 vols.	10 00	net.
Hill's Municipal and Town Officer	3 00	"
Hill's Highway Manual, boards	1 50	"
Hill's Highway Manual, sheep	2 00	"
729 Hill's Probate Laws and Practice, sheep	5 00	"
Illinois, Constitution of, 1870, pamphlet	30	"
Illinois Statutes, 1871–1874, Revised Laws	5 00	"
" " 1877	2 00	"
Illinois Digest, by Wood & Long, 2 vols	15 00	"
" " " vol. 3, supplement	5 00	"
Illinois Reports, vols. 32–38, per vol.	6 00	"
" " 39–46, "	5 00	"
" " 47–80, "	3 50	"
Iowa Reports, vols. 23 to 37, per vol.	5 00	"
" Digest, by Withrow & Stiles, 2 vols.	15 00	"
" " vol. 3, in preparation		
Jones' Book of Forms and Procedure	5 00	"
Minnesota Reports, vols. I–II, (reprinting), per vol.	6 00	"
McCrary on the Law of Elections	5 00	"

Myers' Attorneys' Docket:

Octavo form, for pocket, full morocco	1 00	"
Quarto, 9 x 12, half Russia, 200 pp.	3 50	"
" " " " 400 pp.	4 50	"
" " " " extra, 600 pp.	6 00	"

Myers' Justices' Dockets:

Cap, 9 x 14, half Russia, 350 pp.	5 00	"
" " " " 450 pp.	6 00	"
Root's Law of Corporations in Illinois	2 00	"
Rules of Practice in Courts of Chicago	1 50	"
Jacket's Masonic Burial Service, etc., muslin	1 00	"
" " " " " morocco	1 00	"
Templar Manuel, Tactics, and Drill, cloth	1 00	"
" " " " morocco, gilt	2 00	"
Wells' Law of Limitations	5 00	"
Wendling's Index to Illinois Reports	4 00	"
Withrow's Corporation Cases, vol. I (private)	6 00	"
" " " " II (municipal)	6 00	"
Withrow's Leading Cases in Corporations (in preparation)	6 00	"

730 NATHAN W. BALDWIN, a witness for the defendants, being first duly sworn, was examined in chief by Mr. HIGH, and deposes and says as follows:

Q. State your name, age, residence, and occupation.

A. My name is Nathan W. Baldwin; age, 24; residence, Chicago; occupation, in the employ of Callaghan & Company.

Q. How long have you been in the employ of the defendants, Callaghan & Company, and in what capacity?

A. I have been in their employ since the spring of 1872—March, 1872. I have been on the road most of the time since the fall of 1874.

Q. You mean by "on the road" that you have been trading through the State and canvassing, taking orders for law books?

A. Yes, sir.

Q. Mr. Myers has testified in this cause that about the months of March and February, 1877, he issued to the trade a printed
731 circular, a copy of which I now show you, and that at about the same time he issued a similar printed circular or some printed circular to the legal profession through this State, announcing his intended republication of volumes 32 to 38 of Illinois Reports; state whether during the year 1877 you ever saw any such printed circular at any time.

A. No, sir; I did not.

Q. When did you first see this printed circular, a copy of which I now show you?

A. In your office; I believe it was yesterday.

Q. Saturday, you mean?

A. Yes, sir.

Q. On Saturday last?

A. Yes, sir.

Q. Prior to my showing you that printed circular, on Saturday last, had you ever seen any printed circular of any kind issued by Mr. Myers announcing his republication of these volumes?

A. No, sir; I never saw it.

Q. When and how did you first learn that Mr. Myers proposed reprinting volumes 37 and 38 of Illinois Reports?

A. The first I knew of their being reprinted or knew that
732 they were to be reprinted was when I saw the volumes in the attorneys' offices of 37 and 38.

Q. When you was traveling through the State?

A. Yes, sir.

Q. You mean his new volumes 37 and 38, after he had republished them, in the summer of 1877?

A. Yes, sir.

Q. Prior to that time had you any knowledge of any kind that he intended republishing those?

A. I had not, sir.

Q. When and how did you first learn that Mr. Myers contemplated reprinting of the other volumes between 32 and 38?

A. That was during the summer—this last summer.

Q. The summer of what year?

A. The summer of 1878; I followed up a trip of one of his agents, I believe his son, and I learned from attorneys after that, following after him, that all the volumes were to be reprinted by Mr. Myers and to be furnished at a very low price; I do not remember now the exact price.

Q. State whether that was or was not the first knowledge you had received of his intention to reprint the other volumes between 32 and 38?

733 A. I believe it was, sir.

Q. To what extent were you traveling through this State during the year 1877 and soliciting orders from lawyers for law books?

A. Well, I made a trip in January, and up until about the 15th, I think, of February, and then was off on the road until about the first of April.

Q. After the first of April what did you do then?

A. I started out again on the road, on the regular route.

Q. How long was you gone?

A. I made a trip then of about four weeks and another of six weeks, which brought it up until about the latter part of June, and then I laid off for six weeks; I went East; I came back and started out again the first of August or the last of August. I was away during July and until the latter part of August.

Q. After the latter part of August were you traveling through the State again soliciting orders?

A. Yes; I have been traveling ever since, except a day or two at a time.

Q. What, in your opinion and from your experience traveling among the lawyers in this State, would have been the probabilities of your attention being called to a circular of this kind if one had been issued by the complainant Myers to the profession?

734

A. Well, I should think I would have heard of it on account of selling to these parties that had not been able to get the reports in the last few years.

Q. Is it not time, as a matter of fact, that while you were traveling through the State in the year 1877 you were actively engaged in soliciting orders for the republication of the Illinois Reports by Callaghan & Company?

A. Yes, sir; I made something of a specialty of that line at that time.

Cross-examination by Mr. LE MOYNE:

Q. Look at this circular, "Exhibit A" to deposition of W. L. Mead, and state if you ever saw that or a copy of it.

A. No, sir; I never saw any such circular as that.

Q. Look at "Exhibit B" to the deposition of W. L. Mead and state whether you ever saw a copy of that.

735 A. I believe I have seen that circular, but I do not know at what date.

Q. Where did you see it?

A. I do not know where I have seen that circular; I have seen it somewhere.

Q. Do you mean you saw it somewhere in your travels?

A. Well, I do not know when I have seen it; I have seen the circular somewhere.

Q. Was it your custom in traveling where you found circulars from rival establishments to send copies of them home to the firm for which you were traveling?

A. Well, I believe that that is the custom. I do not know that I have ever received special orders to that effect, however.

Q. Was that your custom?

A. I do not know that I have ever sent in a circular from any other house.

Q. You say you never saw any other circular similar to the one shown you by counsel for defendants?

A. I never have seen anything in that form.

Q. What do you mean by that form? Have you ever seen any containing substantially that matter?

A. I have seen a circular; it was a long circular, but it was
736 sent out, I think, three or four months ago or perhaps a little longer than that. It was a circular perhaps that long (indicating). I do not know what the contents of that was. I do not know that I ever looked it over thoroughly, but that I certainly have never seen.

Q. You mean, do you, that you never saw a circular printed on two sides of a sheet like that?

A. No, sir; I have not.

Redirect examination by Mr. HIGH:

Q. The circular which you say you did see and to which you have just referred, is it not true that that circular was issued by Mr. Myers since the proceedings in bankruptcy by him last fall?

A. Yes, sir; offering goods at a very low rate; some of his own publications, I think, mostly.

Q. Do you mean to be understood that you never saw any printed announcement of any intention on the part of Mr. Myers to
737 republish these volumes down to the time of the beginning of this suit, in December, 1877?

A. No, sir.

Recross-examination by Mr. LE MOYNE:

Q. Do you mean to swear you did not see this exhibit printed on the postal card before the commencement of this suit?

A. I do not know where I have seen that postal card, sir.

Q. Do you mean to swear you did not see it before the commencement of this suit?

A. Well, I do not know, sir; I do not know as to that.

Q. Then you do not mean to swear that you did not see it before the commencement of this suit, if you do not know?

A. Well, I cannot recollect. I do not know where I have seen the card before.

Q. You do not remember when or where you saw it?

A. No; I do not.

Q. Did you see a number of copies of them—several?

A. No; I do not think I have. I do not remember the
738 circular, except I know I have seen such a circular.

Mr. HIGH:

Q. The postal card, you mean?
A. Yes, sir; that postal card.

The signature of the witness was waived by agreement of counsel. The testimony on behalf of the defendants is here closed.

739 And thereupon defendants read in evidence the deposition of Norman L. Freeman, as follows:

Present at the office of Norman L. Freeman, at the city of Springfield, Illinois, at 10 o'clock a. m., this first day of February, A. D. 1879: Eugene B. Myers, complainant, in person; J. L. High, of counsel for defendants.

NORMAN L. FREEMAN, being first duly sworn as a witness in behalf of said defendants, was examined in chief by J. L. HIGH, of defendants' counsel, and deposed as follows:

Interrogatory 1. State your name, residence, and occupation.

Answer. Norman L. Freeman; Springfield, Illinois; attorney-at-law and reporter of the supreme court of Illinois.

Interrogatory 2. Do you know the complainant in this cause; and, if so, how long have you known him?

Answer. I have known him for about twenty years.

Interrogatory 3. What interests have you now in the reports of the supreme court of Illinois?

740 Answer. I am the owner of the copyright and stereotype plates and stock of volume forty-seven and the succeeding volumes which have been issued in the series, up to and including volume eighty-five, and some three or four unfinished volumes subsequent to eighty-five.

Interrogatory 4. How long have you been official reporter of the supreme court of Illinois?

Answer. I was appointed in 1863, and have held the office ever since.

Interrogatory 5. State whether at any time during the year 1875 you had a conversation with Mr. Myers in which anything was said relative to his giving you his copyrights in volumes thirty-two to thirty-eight, inclusive, of Illinois Reports; if so, state when and where such conversation occurred, and what was said by both parties upon that subject.

Answer. I won't pretend to be accurate as to dates, but I think it was in the fall of 1875 that Mr. Thomas, of the law-book house of Soulé, Thomas and Wentworth, of St. Louis, Missouri, and I

741 visited Chicago for the purpose of seeing Mr. Myers, with the view to secure his co-operation in an effort to push the sales of Illinois Reports in the Southern and Southwestern States, on the supposition that the St. Louis house had special facilities for extending the trade in that direction. I was then the owner of from volume forty-seven to the latest then issued of the Illinois Reports. It was understood that Mr. Myers was the owner of the copyright of

from thirty-two to forty-six, inclusive, for about half of which numbers he held the stereotype plates—that is, the latter half, except, possibly, for volume forty-six. The purpose of the visit of Mr. Thomas and myself to Chicago was to secure Mr. Myers' co-operation in respect to his own volumes in connection with my own in this proposed Southern trade. Mr. Thomas, Mr. Myers, and I had an interview in Chicago on that occasion, in which the above-proposed plan was disclosed to Mr. Myers and his co-operation solicited. Mr.

742 Myers assented to the arrangement, in which he and myself were to make special rates to the St. Louis house in order to make it to their interest to carry out the plan. An important part of the co-operation on the part of Mr. Myers was in the furnishing of stock from the plates which he then already had and in reproducing those volumes which were then out of print. Mr. Myers agreed thus to co-operate so far as to authorize the St. Louis house to announce that the volumes from thirty-two to forty-six, then out of print, would be reproduced within a reasonable time. There was some discussion between us as to the probable success of the proposed scheme and the advisability of reproducing those volvmes out of print and within what time. Without attempting to state all that was said in that connection, I said to Mr. Myers: "If you decide definitely not to reproduce those volumes out of print, will you give me the copyright of those volumes if I will agree to reproduce them?" Mr. Myers answered he would.

743 Interrogatory 6. Was your proposition to him that he should give you those copyrights as a sale, for a pecuniary consideration, or as a gift, in consideration of your republishing them?

Answer. My idea was that if the plan promised success—so that I would be willing to incur the expense of republishing the volumes and he was not—that I should have the privilege of doing so. In that connection I had no idea of giving Mr. Myers any money.

Interrogatory 7. State whether anything was then said as to which of his volumes were out of print; and, if so, whether volumes thirty-two to thirty-eight, inclusive, were spoken of as those out of print.

Answer. It is not probable that the numbers were specifically named, as I was well aware at that time which of the volumes were out of print and which were not.

Interrogatory 8. State whether at any time in the latter part of the year 1876 or early in 1877 you had a conversation with

744 Mr. Myers concerning the sale by him to you of his interest in volumes thirty-two to forty-six, inclusive, of Illinois Reports; if so, when and where and what was said by both parties on that subject.

Answer. I made a contract with the Callaghans on the tenth of March, 1877. Within a few months of that time I had several talks with Mr. Myers on the subject of his selling to me his interests in the Illinois Reports. I do not remember of any price being mentioned, except upon one occasion. On that occasion I asked him what he thought they were worth—that is, the copyright to thirty-two to

forty-six, inclusive, and such plates of any of those volumes as he then had, together with the book and sheet stock. His answer to that question was that he ought to have eight thousand dollars. This conversation was held in my office.

Interrogatory 9. State what, if anything, Myers then said as to his reasons for selling you the property named in your last answer.

Answer. The principal reason he assigned was that it was
745 a fragment in the series, and that I could do better with it than he could.

Interrogatory 10. You have said that this occurred within a few months of the date of your contract with the Callaghans. Was it before or after that date?

Answer. I have no means of fixing the time.

Interrogatory 11. State whether at any time between October 9th, 1871, and Jan. 1st, 1878, you furnished Mr. Myers any copies of either of volumes thirty-two to thirty-eight, inclusive, of Illinois Reports; if so, when, which volumes, and how many copies of each.

Answer. I have no distinct recollection on that subject. While Mr. Myers was my publisher I received from him on my own account ten sets of each volume in sheets, which I had bound and sold to whom I pleased. Subsequent to the publication of volume forty-six, when I became my own publisher, it was my habit to keep on hand a stock of those back volumes, as it is now, so far as I
746 can get them, and to that end Mr. Myers and I frequently exchanged stocks, but as to what of those back volumes I had on hand at any one time or who got them I cannot tell. If Mr. Myers wanted them he got them. I also sold them to the profession.

Interrogatory 12. I understand you have been your own publisher of Illinois Reports from volume forty-seven to the end of the series?

Answer. Yes; and the Reporter from volume thirty-one to the present.

Interrogatory 13. What, in your experience as reporter and publisher of Illinois Reports, is the usual time within which the first or principal demand for these reports is supplied after their publication?

Answer. Immediately after the publication. By this I wish to be understood that the principal immediate demand is from regular subscribers, to whom the books are shipped as soon as published.

747 Cross-examination by EUGENE B. MYERS, complainant, in person:

Interrogatory 1. In your testimony this morning you have stated that you visted Chicago in the fall of 1875 and had an interview with me regarding the republication of my volumes, thirty-two to forty-six, of Illinois Reports; will you state in connection with that if it was your intention to reproduce volumes nineteen to thirty-one, inclusive.

Answer. I find upon further examination that I was mistaken in placing that interview in 1875. It occurred, as I now recollect and state, in the year following—in 1876. At the time of that interview I had in contemplation, in connection with Wm. L. Gross, Esq., the re-reporting and republication of volumes nineteen to thirty, inclusive, and the republication of volume thirty-one and of Beecher's Breese.

748 Interrogatory 2. Look at the letter-press copy now shown you from my letter book of a letter purporting to have been written by me to you, under date of November third, 1876, and state if you received such letter from me in connection with the negotiations referred to.

Answer. I have before me the letter-press copy referred to — you in your interrogatory, and I recollect receiving from you, subsequent to the interview between Mr. Thomas, yourself, and myself, in Chicago, a letter substantially like this copy, and I have no doubt this is an exact copy of that letter.

Complainant offers in evidence the letter-press copy to be attached to the deposition of the witness, and the witness identifies the same with his initials.

749 Interrogatory 3. Under that arrangement for co-operation did you issue any volumes between nineteen and thirty-two, Illinois Reports; if so, how many, or how far had they progressed up to the time of making your contract with the Callaghans, in March, 1877?

Answer. None of the volumes had been issued by me or by Mr. Gross and myself at that time; several of them were in press, however, in various stages of progress.

Interrogatory 4. Did you announce the republication of volumes nineteen to thirty-one, inclusive; if so, when and how?

Answer. The circular which I have before me was issued by Mr. Gross and myself about the time of its date, February seventh, 1877.

Complainant offers in evidence the circular referred to by the witness; the same is identified by his initials and annexed as an exhibit to his deposition.

Interrogatory 5. Mr. Freeman, here is another circular; please state if this was issued by you and give the date of it.

Answer. The other circular referred to, which I have in my hand, was issued by me and dated February twenty-sixth, 1877.

750 Complainant offers in evidence the circular in question; the same is identified by the initials of the witness and annexed as an exhibit to his deposition.

Interrogatory 6. Mr. Freeman, look at this circular, published by me, dated March 1st, 1877, and tell us if you ever saw it before.

Answer. I am unable to identify this circular as ever having come to my attention until yesterday, when it was shown me by yourself. I receive many circulars and am not in the habit of giving

any attention to them. I usually throw them aside without special notice of their contents.

Interrogatory 7. Look at the letter-press copy now shown you in my letter book of a letter purporting to have been written by me to you, under date of February 16th, 1877, and state whether you received such a letter about that time.

Answer. I cannot say that I recollect receiving this particular letter, but, from my recollection of the general purport of our
751 correspondence about that time, I have no doubt this is a correct copy of that letter. I am not in the habit of preserving my general correspondence, by filing or otherwise.

Complainant offers in evidence the letter-press copy in question, and the same is identified by the witness with his initials and attached as an exhibit to his deposition.

Interrogatory 8. Look at the letter-press copy now shown you, in my letter book, of a letter purporting to have been written by me to you, under date of February 20th, 1877, and state whether you received such a letter about that time.

Answer. I have no doubt I received the letter of which this is a copy. Its general purport I remember.

Complainant offers in evidence the letter-press copy in question, and the same is identified by the witness with his initials and attached as an exhibit to his deposition.

Interrogatory 8. Look at the letter-press copy now shown
752 you in my letter book of a letter purporting to have been written by me to you under date of March 1st, 1877, and state whether you received such a letter about that time.

Answer. I have no doubt I received the letter of which this is a copy.

Complainant offers in evidence the letter-press copy in question, and the same is identified by the witness with his initials and attached as an exhibit to his deposition.

Interrogatory 9. Look at the letter-press copy now shown you in my letter book of a letter purporting to have been written by me to you under date of April 4th, 1877, and state whether you received such a letter about that time?

Answer. I have no doubt I received the letter of which this is a copy.

Complainant offers in evidence the letter-press copy in question, and the same is identified by the witness with his initials and attached as an exhibit to his deposition.

753 Interrogatory 10. Look at the letter-press copy now shown you in my letter book of a letter purporting to have been written by me to you under date of April 25th, 1877, and state whether you received such a letter about that time.

Answer. I have no doubt I received the letter of which this is a copy.

Complainant offers in evidence the letter-press copy in question, and the same is identified by the witness with his initials and attached as an exhibit to his deposition.

Interrogatory 11. State, if you know, what was the state of feeling between the Callaghans and myself down to and including the year 1877.

Answer. During a large portion of that time—prior to March 10, 1877—for several years back, I had no personal relations with either of the Callaghans, and heard nothing from them on the subject. At the time of the interview, about the tenth of March, 1877, between Andrew Callaghan and myself he said enough to
754 show me that a very bitter contest had been going on between the two houses for some time, and from letters received from Myers and from conversation had with him I learned that the antagonism between them was intensely bitter.

Interrogatory 12. Was there ever any effort made on the part of the defendants, Callaghans, to obtain and control the publication of the Illinois Reports? If so, state when, and any particulars you may remember with reference to that matter.

Answer. Mr. Bernard Callaghan, from an early period after commencing the book-selling business in Chicago and while Mr. Myers was my publisher, repeated applied to me to give to his house the publication of the Illinois Reports, and offered various inducements to that end, which I am unable to particularize. Once I remember Mr. Andrew P. Callaghan calling on me for the same purpose.

Interrogatory 13. Do you recollect of saying or writing to
755 me about the time or subsequent to the time mentioned in your circular of February, 1877, to go ahead and get out thirty-two to thirty-eight quickly before Callaghan reached them, as he was progressing with his volumes nineteen to thirty?

Answer. I presume I may have said such a thing to you, as I have always advised you to reproduce those volumes as speedily as possible. I always understood it to be your intention to reproduce them, and it was to my interest to have you do so, thinking thereby to promote the sales of my volumes.

Interrogatory 14. Did you not exact from me a verbal agreement that I would not dispose of my copyrights in volumes thirty-two to forty-six, inclusive, to any other person but yourself?

Answer. For some time prior to March, 1877, there was an agreement between Myers and myself to the effect that he should not sell his interest in the Illinois Reports to any person without my consent. When Mr. Myers first wrote me the Callaghans were
756 proposing to buy I explicitly forbid him to sell on that agreement.

Interrogatory 15. You have stated that I wanted eight thousand dollars for my interest in volumes thirty-two to forty-six, inclusive. Did you consider that a fair price?

Answer. I am unable to fix a value on that property. If I had owned them in connection with mine I would not have taken that price for them.

Interrogatory 16. In your opinion, what would be a fair compensation for preparing a volume of law reports, making the syllabus, statement of the facts, collating the authorities cited by counsel, stipulations, preparing the index, table of cases, and reading the proof?

Answer. It is impossible for me to answer that question.

Interrogatory 17. State whether in the conversation in the fall of 1876, in which you say I offered to give you copyrights of thirty-two to thirty-eight, inclusive, on condition of your repub-
757 lishing if I decided not to do so, that offer was not coupled with or dependent upon a reduction which you should allow me upon all your volumes of Illinois Reports?

Answer. If the contingency had arisen under which I should reproduce the volumes of which Mr. Myers owned the copyright spoken about in that conversation I should have understood that the trade rates we then fixed upon would have extended to the volumes so reproduced.

Interrogatory 18. Have not the Callaghans and you held frequent conversation regarding the republication of my volumes between March 10th, 1877, and December, 1877? If so, state if Mr. Callaghan explained the manner in which he intended to reproduce my volumes without infringing my copyright.

Answer. I do not remember that the subject was ever mentioned between any of the Callaghans and myself, except, perhaps,
758 when Mr. A. P. Callaghan and I made our contract, about the 10th of March, 1877, and possibly on one occasion afterwards, when Mr. Denslow came to Springfield, I think the subject was alluded to and I suggested difficulties in avoiding the use of Myers' books in re-editing, inasmuch as there were frequent verbal changes made from the original manuscript of the opinions. Mr. Callaghan, as I recollect, expressed himself as being aware of that practice, and in such event he would consider the published volumes as the originals, or something about to that purport. I had similar conversations with Mr. Denslow, who, I understood, was editing some volumes for the Callaghans, and it is possible I may have confounded these conversations to some extent.

Interrogatory 19. In your conversation with Mr. A. P. Callaghan did he ever claim in any way that I had consented or was
759 willing that his firm should reprint any of my volumes?

Answer. I have no recollection of any such talk.

Interrogatory 20. In reporting the decisions embraced in volumes thirty-two to forty-six, inclusive, please state how much or what proportion of the matter was original matter prepared by you.

Answer. It is all my work, except the opinions, with possibly the exception of an occasional statement of facts which the judge writing the opinion may have made.

Redirect examination by Mr. J. L. HIGH, of defendants' counsel:

Interrogatory 1. Do you mean that your work on volumes thirty-two to thirty-eight was made up from the printed abstracts, briefs, records, and other papers in the case, including manuscript opinions?

Answer. That is what I mean.

(Signed) N. L. FREEMAN.

760 It is stipulated that the letter-press copies offered in evidence may be retained by complainant upon his furnishing written copies thereof to defendants, to be compared with the originals.

761 *Illinois Reports, Re-reported and Annotated, Volumes XIX to XXXI, Inclusive.*

The decisions of the supreme court of Illinois embraced in these volumes have for years been out of print. Their republication has long been demanded. The State has at different times been urgently solicited to reprint them, but without avail. The large amount of capital required, the limited sales, the slow returns, and the meagre profits were considerations potent enough to deter private enterprise from undertaking the work.

The undersigned, at the solicitation of the bench and bar of the State and in the hope of ultimate recompense, undertook the arduous labors and incurred the financial hazzard of re-reporting,
762 annotating, and publishing these scarce decisions of our court of last resort. For more than twelve months past they have been thus engaged. Every case has been carefully re-reported, the head-notes and statement of the case made to conform to the general style of the current volumes of the Illinois Reports, and such annotations and references made to other decisions and to the statu-es as seemed to be necessary.

They have also secured the right to reprint Beecher's Breese, and will issue it as one of the series.

For obvious reasons this announcement has been delayed until the present, when the initial volumes are about to issue from the press. The greater part of the work is done, and the new volumes, now in stereotype plates, will be issued from the press as rapidly as a due regard to mechanical excellence will allow.

In typography, paper, printing, and binding the new volumes will fully equal the best American Reports, and will be supplied
763 to subscribers for the series at $5 per volume; single copies, $6. Where the money does not accompany the order the books will be shipped C. O. D. When copies are directed to be mailed the necessary postage will be added. In all cases the purchaser will pay the cost of delivery. No attempt will be made to issue the volumes in their numerical order; those which can be first made ready will be first issued.

Our labors have been arduous and our outlays large; for a recognition of the one and a speedy return of the other we appeal with confidence to a generous and noble profession.

Springfield, Ill., February 7th, 1877.

NORMAN L. FREEMAN.
WILLIAM L. GROSS.

To the lawyers of Illinois:

A few days ago William L. Gross, Esq., and myself announced our purpose to re-report and publish the decisions of the supreme court of Illinois which are embraced in volumes 19 to 30, and to republish vol. 31 and Beecher's Breese. Since that time I have acquired the entire control of that enterprise, but will still have the valuable assistance of Mr. Gross in carrying the work to completion. I have also secured the assistance of two other gentlemen, who are able and competent lawyers, in the completion of the volumes mentioned. My object in undertaking this labor was purely selfish. I own the copyright and stereotype plates of vol. 47 and all subsequent volumes now issued, which, with those now in press and which will
765 be issued very soon, number 33 volumes. The volumes from 19 to 31 and Breese have been out of print for several years, and full sets of the Illinois Reports could not be obtained except, a large portion of them, second hand and at high prices. Mr. E. B. Myers, of Chicago, owns the copyright of the other volumes which are out of print—32 to 38, inclusive—and there is a fair probability that he will reproduce them in a short time. It occurred to me that by reproducing a good edition of the vols. 19 to 31, so that full sets of the Illinois Reports could be furnished, my sales of the 33 volumes which I own would be promoted. The number of subscriptions already received is far beyond my expectations, and is a guaranty to me that the enterprise of reproducing those back volumes is not as hazardous an experiment as I feared it would be; but now that I have the whole matter in my own hands I have
766 concluded to make another proposition to the profession:

To all attorneys who will buy from me the 33 volumes (47–79), at $4.50 per vol., delivered, I will furnish the full set of the proposed reprints (19–31, inclusive, and Beecher's Breese) at $2 per volume, delivered.

To purchasers of 15 volumes of those from vol. 47 to the latest, at $4.50 per volume, delivered, the set from 19 to 31 and Breese will be furnished at $2.50 per volume, delivered.

To purchasers of 10 volumes of those from vol. 47 to the latest, at $4.50 per volume, delivered, the set from 19 to 31 and Breese will be furnished at $2.75 per volume, delivered.

To purchasers of vols. 19 to 31 or any of them, $4 per volume, delivered.

This proposition will apply to such as have already favored me with their orders, according to the character of the order made, as above designated.

These reprints will be delivered promptly as they are issued. Several of the volumes are in stereotype plates and now running
767 through the press. They will all be ready for delivery within less than 12 months.

Now, as to future volumes, I have sold no books to the State since the 62d volume. Therefore my only means for compensation and to pay the necessary expenses of my office has been in my sales to the profession. Less than 600 lawyers out of about 2,000, outside of Chicago, in this State buy the reports. I have held the books at $5 per volume, delivered. This, it seemed to me, as a business proposition, was as low as I could sell them with a view to being reimbursed in my actual cash outlays and even a meagre compensation. I receive no salary from the State, as other State officers do. No appropriation is made for my necessary clerk hire, as is done for them, nor am I furnished at the expense of the State with porters and pages. I furnish my own office, buy my own stationery and postage stamps, and pay my own assistants. I pay the entire expense of my office and the printing of the books out of my
768 own pocket. In that view, considering the limited number of books sold, I was unable to see how I could safely reduce the price of the reports; but it is suggested to me that out of the large number of lawyers in the State many would become subscribers to the current volumes if the price were reduced, and thus, by increasing the sales, I would be compensated for the loss of profits. So, in looking over the subject, I have concluded to reduce the price to lawyers of the future volumes to $2.50 per volume, delivered. This will, of course, apply to my present subscribers as well as my new ones. In this way a set of Illinois Reports can be obtained at a low price, except from 1 Scammon to 18 Illinois—17 volumes. These volumes, known as the "Underwood edition," are held, as I understand, at $5 and $6 per volume. That is an unreasonably high price for that number of volumes, and unless it is reduced it will become necessary to re-report them and publish them at a
769 fair price—and that will be done.

My proposition for future volumes, of course, includes all in the current series not yet issued. Vols. 70, 71, 72, and 79 are all in stereotype plates and will be issued in rapid succession. Vol. 80 is in press. Vols. 73 and 74 will be ready in a few weeks and thus make the series complete.

I trust I shall have the co-operation of the profession in my efforts to furnish them cheap reports.

Springfield, Ill., February 26, 1877.

NORMAN L. FREEMAN.

770 "N. L. F."

CHICAGO, *Nov. 3rd*, 1876.

Hon. N. L. Freeman, Springfield.

DEAR SIR: I am the owner of the stereotype plates of volumes 39 to 46, inclusive, of the Illinois Reports; also the copyrights of volumes 32 to 38, inclusive, but which are now out of print. It is my

intention within a reasonably short time to reproduce those volumes in order to furnish full sets of the Illinois Reports at reasonable rates.

It is my desire to co-operate with you in securing the aid of Messrs. Soulé, Thomas & Wentworth in extending the sale of our (2) reports outside the State of Illinois.

Now, for the purpose of accomplishing that object, I propose making these grades of prices to you and Soulé, T. & W. as follows:

On sales to be made at $5 per vol. $4.00 net; on sales to be made at $4.50 per volume $3.50 net; on sales to be made at $4.00 per vol. $3.00 net.

771 The sale of all single volumes to be made at $5.00. Sales in sets to made in Illinois and Colorado shall not be offered less than $4.50 per volume. Elswhere in the Southern and Southwestern States, in order to effect an increase of sales, the price in sets shall be uniformly made at $4.00 per volume.

In partial sets within the same territory they shall be sold at $4.50 per volume.

Orders from the trade are to be referred to us by S., T. & W.

Yours, truly, E. B. MYERS.

772 ("N. L. F.")

CHICAGO, *Feb.* 16*th*, 1877.

D'R FREEMAN: I forgot to enclose my check last evening, so do it now.

By the way, what discount shall you allow me on the reprints?

I will do all I can to obtain subscribers in advance. I have not seen any of the "Ireland" men since my return. The old man is out of town and Andrew is at home sick, maybe, of too much Illinois Rep'ts or waiting for me to hear from Albany.

They were in the Legal News office yesterday trying to find out if you were to have a notice in on Saturday. The Judge said they did not find out, but I do not bet on that institution, as they receive a great deal of work from Callaghans and favor them generally.

Would it not be policy to let them make a volume for you,
773 with the understanding if all was satisfactory they might have more?

You said you would give me $6,000 for 32 to 46 Illinois if the State purchased under the bill pending. I want to feel certain of that if I am pushed by "Cally" to accept or decline their offer; so please write to that effect.

Yours truly, E. B. MYERS.

774 ("N. L. F.")

CHICAGO, *Feb.* 20*th*, 1877.

D'R FREEMAN: Callaghan is canvassing our att'ys for their subscription to an edition of the current volumes of Illinois Reports, to be issued within 60 days after publication by you, at $2.50 pr. vol-

ume. Some have been in to get my opinion as to their ability to carry out their undertaking. You can imagine what my answer would be.

I am waiting for your answer to my last two letters regarding the prices of the reports to S. T. & W., and as to commissions on your reprints.

Yours, &c., E. B. MYERS.

Has the Law Institute proof-sheets of '79? Had they not better be stopped?

775 ("N. L. F.")

CHICAGO, *March 1st*, 1877.

N. L. Freeman, Springfield.

D'R SIR: Please send the following per express. * * *

E. B. MYERS,
Per G. M. B.

Old man C. has just been in and says they have a despatch from Clarke, their traveler from Decatur, saying you had reduced the price of current volumes to $2.50, and so they shall withdraw their plan of reprinting. He said a customer from Joliet had given them the above information before they received the despatch from Clarke; also that they had taken 14 sub's in Bloomington. He said they had contracted with five different houses for the reprinting of 19 to 30. Each has promised a volume by the 15th. They will not be annotated, as they would not have time, and it was un-
776 necessary to re-report them, as they owned the copyright, but 32 to 38 they should, or rather condense the whole from 19 to 79. So much "gas" has not been let off in my store for a long time.

E. B. M.

777 ("N. L. F.")

CHICAGO, *Apr. 14th*, 1877.

D'R FREEMAN: Yours of the 3d is at hand. I am glad you will not believe "unless I tell you so." If I am or ever have plotted against you I did not know it, but I have talked pretty hard to a party about the manner I have been used by you in the new arrangement.

If it goes direct to you I cannot help it, and I have no doubt but it grows immensely going over the road. I have good reason to feel hurt, for you will not supply me with your volumes less than $3.50 net, and your agents will not unless I sell mine at the same, and as but few of my volumes are wanted it works against me. I would not be "bulldozed" into selling my plates and copy-
778 rights for two-thirds their value; therefore, I presume I must make the best of it. Ten days ago I accepted $3.25 per volume for mine, with the understanding that I should have yours of Cal-

laghan, but Saturday they accused me of selling — less than $3.50, and shut down. I didn't so sell; simply said to an old taker of the rep'ts that hereafter the new vols. would be sold at $3.50 or less, and of course he, as their friend, went direct to them, and so there was a rumpus, and they tried to make me enter into a written stipulation, &c., which I declined, because the only one we ever had was broken by them, and I vowed I would never sign another with them, & I "won't."

I have much I would like to say, but I cannot write; my eyes are bothering me again.

Yours, E. B. M.

779 ("N. L. F.")

CHICAGO, *April* 25, 1877.

D'R FREEMAN: Yours of the 22nd is at hand. I will exchange my volumes for yours, thus: 5 sets, 39–46, × = 40 vols., @ $4, $160. For 50 (say) of yours, @ $3.50 = $175. You are not to sell mine — less than $3.50, and then only in complete sets, including yours; single vols., $4.50.

I have been engaged in court for two days in the trespass case of Myers *vs.* Callaghan, being an appeal from a justice court. The judgment of the court below was sustained, with interest from March 10, 1876, and $25 additional as damages for entering the plaintiff's store and carrying off his property unlawfully, and yet they are not happy and will go up to the supreme court.

780 How many of 32 to 38, inc., will you take? Confidentially, "38" is nearly ready. I do not know how many vols; 70 I can use, as Callaghan got nearly all the bar here to subscribe for them at $2.50 first, and subsequently got it changed to $3.50, telling my own customers—friends—that I would not have them under two weeks after they would; that's what some folks would call "rubbing it in."

I will risk taking 25 or 30 any way, just for respectability, as I am in the law-book business, you know, so send them up.

They are making tremendous efforts to sell; are contracting (indistinct) sets and guaranteeing to supply the balance within three months for $1.25.

Jennings, of Banks & Bros., N. Y., was here. We had a talk over the matter of my selling. I suggested that you might sell and advised him to visit you, and he said he would. Has he reported yet?

781 He is very anxious to get a hitch in on them to hurt "Calla," and I wish him luck.

If I can see any profit or get sufficient patronage for 32 and after I shall put them out as rapidly as possible.

Yours truly, E. B. MYERS.

Rec'd & filed Feb. 6, 1879; opened for Mr. Myers Feb. 6, 1879.
(Signed) W. H. BRADLEY, *Cl'k.*

782 *Complainant's Testimony in Rebuttal Concerning Infringement of Volumes 32 to 38, Embraced in Original Bill.*

And thereupon complainant, by way of rebuttal, read in evidence the deposition of George K. Hazlitt as follows:

In the Circuit Court of the United States for the Northern District of Illinois. In Chancery.

EUGENE B. MYERS, Complainant,

vs.

BERNARD CALLAGHAN *et al.*, Defendants.

Testimony taken before Henry W. Bishop, master in chancery of said court, Monday, the 17th day of February, A. D. 1879.

Present: J. V. Le Moyne, Esq., solicitor for complainant; James L. High, Esq., solicitor for defendants.

GEORGE K. HAZLITT, a witness for the complainant, being first duly sworn, was examined in chief by Mr. LE MOYNE, and deposes and says as follows:

Q. What is your occupation?

A. Printer.

Q. How long have you been engaged in printing in Chi-
783 cago, and give the name of your present firm.

A. Twenty-three years; the name of the firm is Hazlitt & Reed.

Q. Mr. Hazlitt, look at the paper now shown you and state whether you printed that. And, if so, about when and how many copies (handing to witness "Exhibit A")?

A. That, I should say, was our printing, sir; it is our type; I recognize that; I should say it was our printing, to the best of my knowledge and belief.

Q. When was it printed by you?

A. Well, I find on reference to our books that we printed five hundred circulars for E. B. Myers February 16, 1877; that is the entry upon the book.

Q. Can you testify from the memorandum on your books what kind of a circular it was or from your recollection?

A. It is described upon the original book of entry there as "500 circulars—list of law books."

Q. Look at this, which is marked No. 2 of your deposition, and state if you have seen that before; see if that did not come off your file.

784 A. Probably it came off the file there in the office, sir, as I recognize the corrections marked upon the side there; they look like my own handwriting; it is the usual style in which I marked them. I cannot state about it coming off the file or not; I cannot testify as to that.

Q. Did you ever see it before?

A. Well, I cannot swear to seeing it before. It is our type, and I have not any doubt but what we printed it, but I cannot swear to that.

Q. What is your best recollection when you printed it?

A. I am only guided by the entry on the books, sir; that is all.

Q. State from that when you printed it.

A. According to the entry upon the top of the book there, if this is the circular referred to, it is 500 circulars, February 16th 1877.

Q. Mr. Hazlitt, do you not remember that when that circular was first printed for Mr. Myers he made some objection to it on account of the size of the paper, and that you printed an additional lot on a little larger paper?

785 A. I recollect the circumstances of there being something about a circular being printed wrong—on small paper. Whether that is the circular or not I could not swear, sir. There was a trouble of that kind I know.

Q. You do not know whether it was this circular or not?

A. No, sir; I am only guided by this entry I find on the book in my recollection of it.

Q. Was the mistake you speak of as to the size of the paper, according to your best rocollection, made about February, 1877?

A. Well, I have no recollection about the mistake—that is, about the time of it. It is one of those thinge that occurs in business and passes rapidly out of my mind. I could not charge it at all.

Q. Mr. Hazlitt, do you not remember that Mr. Myers also objected to the circular as first printed; that it was printed on the second and third pages instead of on the first and third, and that was one of the corrections you made in reprinting it?

A. I know there was trouble about the style of printing and the size of the paper of a circular, and that we had to reprint it,

786 but I could not swear that that is the circular. I presume it is, from about that date, but as to that actually being the circular it is something I could not swear to.

Q. But my question is, whether in the circular that Mr. Myers objected to did he not also object that the first circular you printed was printed on the second and third pages instead of the first and third pages of the sheet?

A. I could not charge my memory distinctly as to that. I know there was trouble about a circular, and that it was reprinted, but the exact form of the alteration or the weight of the paper is something I cannot recollect now.

Cross-examination by Mr. HIGH:

Q. Are you able to state which of the circulars just shown you, "Exhibit A" or "Exhibit B" to your deposition, is the one of which you printed 500 copies, if you did print 500 copies of either?

A. I have nothing to guide me, sir, but the entry in the book and the knowledge that this type and those marks there appear to be my own.

787 Q. Is not this type used by other printers in Chicago?
A. Yes, sir.

Q. You cannot state whether you printed 500 copies of either of these circulars now shown you, marked Exhibits A, B to your deposition?

A. Only as the entries in the books guide me. I would say, in explanation, that I find that this entry of February 16th, 1877, these 500 circulars, and also that it was paid for by an entry upon the cash book in the April following. That is the reason I think that it is the circular referred to. I am guided merely by the date of that and the corresponding entry upon the job book, or the entry of the 16th of February.

Q. Look at the printed circular annexed to the deposition of E. B. Myers in this case, marked on the back "Complainant's Exhibit No. —, H. W. B., master," and state if you know whether you ever printed that circular.

A. I should call it the same circular from all that I see, sir.

Q. The same as what?

A. The same as "Exhibit B" of my deposition.

Q. But you have no personal knowledge that you ever printed either or any of the circulars?

788 A. I could not swear positively as to that, any more than I am only guided by the entry on the books—that is all, sir—and the date they are entered.

The signature of the witness to the above deposition was waived by agreement of counsel.

789 "EXHIBIT B" — Dep. G. H. Hazlitt.

Law Books Published by E. B. Myers, Law-Book Seller, 93 Washington Street, Chicago, March 1, 1877.

American Corporation Cases by Withrow:

Vol. I, Private Corporation Cases	6 00
Vol. II, Municipal Corporation Cases	6 00
Vol. III, Private Corporation Cases, in press	6 00
Vol. IV, Municipal Corporation Cases, in press	6 00
Barber's Law Common Pleas Book	4 00
Bassett's Criminal Indictments and Pleading	4 50
Cities and Villages, act of Illinois	50
Court Rules—Practice in Chicago	1 50
Haines' Treatise for Justices of the Peace, seventh edition	7 00
Haines' Township Organization Laws, 396 pp., pamphlet	2 00
boards	2 50
law binding	3 00
Hill's Highway Manual (for county officers), 240 pp., boards	1 50
sheep	2 00
Hill's Common Law Practice, 2 vols., 8vo	10 00
Hill's Chancery Practice, third edition, 2 vols.	10 00

Hill's Probate Guide, third edition	5 00
Hill's Municipal or Town Officer, 840 pp., 12mo	3 00
Illinois Constitution of 1870	25

Illinois Supreme Court Reports:

Breese's Reports (1 Illinois), reprinting	6 00
Scammon's Reports (2 to 5 Illinois), 4 vols.	24 00
790 Gilman's Reports (6 to 10 Illinois), 5 vols.	30 00
Illinois Reports (11 to 18), 8 vols. (70, 71, 72, 73, 74 in press)	48 00
Illinois Reports (19 to 38, inclusive), reprinting	
Illinois Reports (39 to 78), 40 vols.	200 00
Illinois Reports (vol. 46 separate)	7 50
Illinois Digest, by Wood and Long, 3 vols.	20 00
Illinois Digest, vol. 3 (supplement)	5 00
Illinois Statutes (E. B. Myers' authorized edition), Revised Laws of 1871–'74, 1 vol., 1,253 pp., royal 8vo	5 00
Iowa Supreme Court Reports, per vol.	5 00
Iowa Digest, by Withrow and Stiles, 3 vols., royal 8vo	15 00
Jones' Form Book	5 00
McCrary on the American Law of Elections	5 00
McMaster's Digest of the Law of Railways, in press	
Minnesota Reports, 11 vols., reprinting	66 00
Root's Law of Corporations in Illinois	1 50
Session Laws of Illinois, 1871–'2	4 00
Session Laws of Illinois, 1873	2 50
Session Laws of Illinois, 1874	3 00
Session Laws of Illinois, 1875	1 75
Wells' Law of Limitations	5 00
Wendling's Index to Illinois Reports	4 00

Withrow's Corporation Cases:

Vol. I, Private Corporation Cases, 8vo	6 00
Vol. II, Municipal Corporation Cases, 8vo	6 00
Vol. III, Private Corporation Cases, in press	6 00
Vol. IV, Municipal Corporation Cases, in press	6 00
Withrow and Stiles' Digest of the Iowa Reports, 2 vols., royal 8vo	15 00
791 Wood and Long's Digest of the Illinois Reports, third edition, 2 vols., royal 8vo	15 00
Wood and Long's Illinois Digest, vol. 3 (supplement)	5 00

Miscellaneous:

Templar Manual for Knights Templar, 32mo, cloth	1 00
full morocco	2 00
Sackett's Masonic Burial Service, muslin	1 00
morocco, gilt	1 50

And thereupon complainant read in evidence the deposition of Silas K. Reed as follows:

792 Testimony taken before Henry W. Bishop, master in chancery of said court, Monday, the seventeenth day of February, A. D. 1879.

Present: J. V. Le Moyne, Esq., solicitor for complainant, and James L. High, Esq., solicitor for defendants.

SILAS K. REED, a witness for the complainant, being first duly sworn, was examined in chief by Mr. LE MOYNE, and deposes and says as follows:

Q. What is your occupation, Mr. Reed.
A. Printer.
Q. How long have you been engaged in the printing business in Chicago.
A. I have been over eleven years.
Q. Give the style of your firm.
A. Hazlitt and Reed.
Q. State if you did any work for Mr. Myers in the spring of 1877 of any volumes of the Illinois Reports; if so, when and what volumes?
A. We done work for Marder, Luse & Company.
Q. State what volume it was and when you did it.
A. On referring to the books I find charged against Marder,
793 Luse & Co., June 22nd, 1877, composition of the 38th Illinois Reports.
Q. State when you began that work.
A. Well, I have no means of ascertaining the exact date, but as near as I can get at it it was about April 20th; the proof that we had was measured up from week to week and marked, and we save that proof until the job is completed and bills sent in and allowed and settled for. Sometimes we save it for a year longer, but this has been something over a year and the proof has been destroyed. I have no means of ascertaining the exact date.

It is admitted by solicitor for defendants that the work testified to by this witness was done on the books of Mr. Myers.

Q. Did you have any conversation with Mr. Myers at that time or about that time in regard to printing any other volumes of the Illinois Reports; if so, when and what volumes?
A. The understanding was that there were about seven volumes all told, as near as I can recollect. We commenced on the last volume first; there were about seven volumes; I know we had
794 considerable difficulty in getting down in the price to take the work; that is why it is impressed more vividly on my memory, because the price which we got for the composition and the prices which the union stated that the printers should work for was a considerable variance. We could not afford to take the work for the price, and the union came down in their prices so as to meet

it; and in consideration of the fact that there were seven books to do and the decline in prices of all kinds of labor and material they came down, I think, five cents a thousand on the price of composition paying journeymen.

Q. Did this transaction as to price and the number of volumes to be printed take place before you commenced this volume 38?

A. Well, just about the time we commenced.

Cross-examination by Mr. HIGH:

Q. Did Mr. Myers have anything to do with this arrangement about the printing?

A. Well, Mr. Myers made the bargain with Marder, Luse
795 & Company. We took the work of composition from them.

Q. Have you any knowledge that Mr. Myers did make a bargain with Marder, Luse & Company?

A. Only as I heard them talk together.

Q. You only know from hearsay?

A. I heard the two, Mr. Luse and Mr. Myers talking together.

Q. This volume 38 of which you did the composition was merely a reprint, as I understand it?

A. Yes, sir.

Q. A literal reprint?

A. Yes, sir.

Q. Is it not a fact that with your facilities for work at that time you put that through very fast?

A. Well, we put it through as fast as they wanted we should go with it.

Q. All that was necessary to do was to cut out the copy from the old volume and reprint it literally?

A. Yes, sir; only we made the pages a little wider and a little longer.

The signature of the witness to the above deposition was waived by agreement of counsel.

796 And thereupon complainant read in evidence the deposition of George M. Beckwith as follows:

Testimony taken before Henry W. Bishop, master in chancery of said court, Monday, the 17th day of February, A. D. 1879.

Present: J. V. Le Moyne, Esq., solicitor for complainant, and James L. High, Esq., solicitor for defendants.

GEORGE M. BECKWITH, a witness for the complainant, being first duly sworn, was examined in chief by Mr. LE MOYNE, and deposes and says as follows:

Q. What is your name?

A. George M. Beckwith.

Q. How were you employed in the years from 1870 to 1877?

A. In the store of E. B. Myers, law-book seller.

Q. Look at the circular attached to the deposition of E. B. Myers, dated March 1877. State if you have seen it before; and, if so, where and when?

A. I have seen it about this date in Mr. Myers' book store.

Q. What use was made of it there to your knowledge?

A. For distribution to the trade—to law-book sellers; oc-
797 casionally to other parties. I do not know of any other parties; very likely it was given round. I guess I used to put these into letters to whomever I might write. I guess so.

Q. That is your recollection about it?

A. Yes, sir.

Q. State whether in the years 1876 and 1877 you went to the store of Callaghan and Company; if so, how often?

A. Oh, I used to go down there occasionally.

Q. About how often?

A. Oh, I do not know, I am sure; very occasionally.

Q. Do you mean very seldom?

A. Yes, sir; very seldom. If there was anybody else to send to the store for anything they used to go in preference to me.

Q. Who was generally sent?

A. John.

Q. Is that the porter?

A. Yes, sir.

Q. A German, was he?

A. Yes, sir.

Q. State whether you, at the store of Callaghan & Comyany during the year 1877, made any enquiries from them about their reprints of Illinois Reports.

A. I do not remember of doing so.

798 Q. You had no instructions from Mr. Myers to do so, had you?

A. I might have done, but I do not remember it. I do not remember ever having any such instructions.

Q. State whether you ever heard any conversation between Mr. Myers and Andrew P. Callaghan in regard to Illinois Reports in the fall of 1876 or the spring of 1877; if so, where did said conversation take place?

A. Well, in our store there was a great number of conversations, but I never heard the entire of any one conversation, but I heard portions of some conversations; a little.

Q. State whether in those conversations, about that time, you heard anything said by Callaghan about their reprinting volumes 32 to 38; if so, what did he say about it?

A. About Callaghan reprinting 38?

Q. Yes; about their reprinting it—that is, Callaghan & Company.

A. Why, they said if they did not get a favorable purchase from Mr. Myers that they would reprint them themselves.

Q. What did Mr. Myers say to them then in answer to that?

A. He refused all their offers.

799 Q. Did he consent to their reprinting in any way; what did he say in that regard?

A. I never heard him consent.

Q. Did he not tell them he would prosecute them if they did?

Solicitor for defendants objected to the question as leading and incompetent.

A. Yes, sir; I have got an affidavit on file to that effect.

Q. What answer did they make to that?

A. Oh, I do not believe they—I do not know, I am sure, that they ever made any answer at all. I do not know.

Q. Well, what was the temper or disposition manifested by both parties during these interviews; was it friendly or otherwise?

A. They used to get excited—both parties did.

Q. When you say excited do you mean they got angry?

A. Well, gentlemen of their standing do not ever get angry; they got excited.

Q. How many of these interviews took place at Myers' store during the fall of 1876 and spring of 1877, and which of the firm of Callaghan & Company was there?

800 A. Well, a large number of interviews took place—I never counted them—every little while, and sometimes Andrew Callaghan was there; Mr. A. P. Callaghan, I believe his name is; a little man, I believe, and sometimes the elder Callaghan was there; occasionally, I believe, Mr. Beck was in there. Those are the only parties I remember. They were never there at one time, as I remember; never there all at one time.

Q. Mr. Beckwith, do you remember of Mr. Myers receiving any new volumes of Illinois Reports after the fire from Albany; if so, when were they received?

A. What volumes of the Illinois Reports do you refer to?

Q. Volumes 32 to 38.

A. Mr. Myers had some of those volumes in his store after the fire.

Q. New or second hand?

A. New.

Q. Were you in his employ at the time Frank Shepard was there?

A. Before or after the fire do you refer to?

Q. After the fire.

A. Yes, sir.

Q. Were you there all the time?

A. Yes, sir.

801 Q. State whether or not while Frank Shepard was with Mr. Myers Mr. Myers had any new volumes—new—between 32 and 38.

A. Yes, sir; he had some; very few, though.

Q. Do you remember where they were put?

A. They were put in one of the bins at one side of my desk; the desk I used to sit at.

Q. How were they marked?

A. They were marked just outside the numbers of the reports

whatever it might be; just "38" or "39" or something; just the figures.

Q. Not the name "Illinois" on them?

A. No, sir.

Q. Do you know who put them up and marked them?

A. I do not know who put them up. I think the marking was in my own hands; I think so. I do not know who tied them up.

Q. Look at the circular marked "Exhibit A" to the deposition of W. L. Mead and state whether you ever saw that before, and where and when.

A. Why, yes; I have seen it. I have seen it right in the back of my order book here.

Q. Where did you see it?

802 A. Why, I used it right at the back of my order book here that I used to use at the time when it was issued.

Q. Do you mean you used it at the store of Myers & Company?

A. Yes, sir; it has got my figures of discounts on it, I see.

Q. You mean the copy in your book has your figures on it?

A. Yes, sir.

Q. State whether the two circulars you have been shown were or were not pasted in your book.

A. What two circulars?

Q. The one shown you a little while ago and the one you hold in your hand.

A. Yes, sir.

The cross-examination of this witness was postponed until Wednesday, February 19th, at ten o'clock a. m.

803 WEDNESDAY, *Feb.* 19, 1879.

Met pursuant to adjournment.

Present: Same as before.

The witness was then cross-examined by Mr. HIGH, as follows:

Q. Mr. Beckwith, have you any distinct recollection whether you ever heard Mr. Myers say anything to either of the Callaghan's about prosecuting them for reprinting these Illinois Reports?

A. I had when I made that affidavit.

Q. But you have no distinct recollection now, I understood you to say.

A. Yes; I have a recollection, but it grows fainter and fainter every day.

Q. But independant of that affidavit you would not have much recollection about it, I suppose?

A. Well, I have just got a recollection of a few things. My recollection of that is a good deal fainter than it was twelve months ago, or even six months ago.

Q. It was rather faint then, was it not?

A. No; it was fair.

804 Q. I do not suppose you can now recollect which of the Callaghans he said this to, if he said anything on that point, can you?

A. My impression is it was to Mr. Andrew Callaghan.

Q. Can you fix any time or place?

A. In our store, but I could not tell exactly the time; I think it was about the same time that he was continually running in and out; I do not recollect what time it was exactly.

Q. Your recollection is very vague and misty about the time, I suppose.

A. No; it is not exactly vague; it was a little misty, but I do not think it is vague.

Q. Have you any idea now of the exact language that Mr. Myers used on that point?

A. No, sir.

Q. Do you know whether the language that he used was with reference to volumes 39 to 46?

A. I should say it was in reference to the entire volumes—32 to 46.

Q. May it not have been with regard to volumes 39 to 46?

A. Well, I am under the impression it was with reference to the whole of these volumes.

805 Q. But you are not positive on that point?

A. No, sir.

Q. So that the conversation might have been simply with reference to 39 to 46, as far as you now recollect?

A. It may have been, but the impression is otherwise.

Q. I wish you would try and repeat what he said exactly, Mr. Beckwith, if it is not too misty and vague in your mind.

A. I cannot, sir; of course I must have put down in that affidavit what he said, but I cannot remember now.

Q. Who helped you to make that affidavit?

A. No one; I just went over to Mr. Le Moyne's office myself; after Mr. Myers asked me to go there I went.

Q. Mr. Myers told you what was expected of you, I suppose, with reference to that matter?

A. Well, he just asked me to step over to Le Moyne's office in reference to those reports; that is all. Let us see—when did I make that affidavit; it must have been about twelve months ago, is it not?

806 Q. In January some time—last year. Were you still in Mr. Myers employ when you made that affidavit?

A. Yes, sir.

Q. You were asked in your direct examination on Monday with reference to whether Mr. Myers obtained any of the volumes from 32 to 38 from Albany soon after the great fire, and you answer: "Mr. Myers had some of those volumes in his store after the fire." Are you able to specify which of those volumes from 32 to 38, if any, he had soon after the fire?

A. I can distinctly remember some of the volumes.

Q. Which ones?

A. Well, I have been thinking about it a good deal since the last few days, and I can remember the 32nd and 36th and 38th distinctly.

Q. Can you remember any others?

A. Well, I do not think Mr. Myers had a complete set from the fact—in fact, I am very sure he had not a full set from 32 to 38, but still he had various volumes.

Q. You only recollect the 32, 36, and 38th?

A. That is all that I can distinctly recollect.

807 Q. Now, is this the fact, that at the time of the great fire in October, 1871, Mr. Myers may have sent a few of the sheets of these volumes 32, 36, and 38 to Albany to be bound, and that he got those back from Albany after the fire?

A. That he sent sheets before and got them back after the fire?

Q. Yes; a few sheets, not exceeding eight or ten of each one.

A. If that is likely to be the case?

Q. Well, you have some recollection that he may have sent a few in that way, have you not?

A. Well, I was not in the habit of shipping books to Albany at that time, before the fire, but that is as I understood it.

Q. Those sheets would not have exceeded eight or ten of each volume, would they, Mr. Beckwith, as you understood it?

A. I do not believe that he had more than eight or ten of each volume.

Q. And you only recollect the three volumes that you have named?

A. That is all I can call to mind just now.

Q. You were asked whether while Frank Shepard was with Mr. Myers after the fire Mr. Myers had any new volumes between

808 32 and 38, and you answered, "Yes; he had some; very few, though." Are you sure that he still had any after Frank Shepard came back, in the spring of 1873?

A. Yes, sir.

Q. Can you specify any particular volumes?

A. Well, he may have probably had one or two of 32 and 38 and 36.

Q. How many of the 38 and 36?

A. Perhaps four or five of each.

Q. And that was all, was it—all that you now here recollect?

A. That is all that I now recollect; yes, sir.

Q. Do you know where Mr. Myers got them?

A. I do not. I did not unpack them.

Q. Was there any general source of supply from which these volumes, 32 to 38, could be obtained new in stock, after the great fire of 1871 down to the year 1877, from any reprint?

A. No, sir.

Q. And was it not generally understood in the store there and in the business that they were out of print and had been destroyed by the great fire?

A. Well, we used to tell people that they were out of print,

809 but of course—that is what we used to tell customers—that they were out of print.

Q. And you were not able to furnish complete sets during the year succeeding the fire, were you, except as you picked them up at second hand?

A. Well, of course we had these in the store, and the others we had to pick up second hand.

Q. It was a matter of a good deal of difficulty to fill an order for a complete set, was it not? It took considerable time?

A. That would just depend upon whether we got them second hand or whether we had them new at the time the man bought them.

Q. But if you did not happen to have enough second-hand copies of those volumes from 32 to 38 to fill an order it would have taken considerable time to pick them up?

A. Well, we would have had to wait until we got a second-hand set. It might be a long time or it might not.

Q. You always tried to pick up second-hand copies whenever you could, did you not?

A. Yes, sir.

810 Q. You always understood, did you not, that the stock and plates of volumes 22 to 38 were destroyed by the great fire, except as a few may have been saved in the way you have testified?

A. That is what I understood; yes, sir.

Q. From Mr. Myers?

A. Yes, sir.

Redirect examination by Mr. LE MOYNE:

Q. Mr. Beckwith, you are not now in the employ of Mr. Myers, are you?

A. No, sir.

Q. From the fire down to the time you left Mr. Myers state whether you were not always able to supply any customers with complete sets of Illinois Reports. Were they not always furnished?

A. I do not exactly understand. I have just stated that if we had a second-hand set in stock we would sell it; if we had not we should have to wait until we got them.

Q. Did you not nearly all the time have on hand a full set of Illinois Reports?

A. Most all the time we had a full set; yes, sir.

811 Q. Volumes between 32 and 38 that Mr. Myers had saved were kept in a bin, were they not, tied up in packages of three volumes each?

A. I do not remember how many were in a package.

Q. Were there not a number of packages in at the time you testified?

A. Yes; there were several packages.

Q. You do not remember how many volumes in each package?

A. No; I cannot tell; they were not marked outside. I just occasionally used to see; the number I could not tell.

Q. You do not pretend to be accurate, then, when you state how many there were?

A. No, sir.

Q. Look at the postal card and circular printed on the back of it and state whether you ever saw it before, and where.

A. Where I saw this.

Q. Yes; or a copy of it.

A. In Mr. Myers' store.

Q. When?

A. At the time I was in his employ.

Q. What was done with it—how was it used?

A. For general distribution.

Q. Can you fix the date when it was distributed—about the time?

812 A. It must have been about 18 months ago, I think—15 or 18 months ago.

Q. Did you distribute any of them; and, if so, how—by mail or otherwise?

A. I used to put them—sometimes, if a customer enquired for these reports, I would just address the postal card to him.

Mr. HIGH:

Q. When did you leave Mr. Myers' employ?

A. At the end of August, 1878.

Q. If you sent out any of these postal cards just shown you was it not during the winter of 1877 and 1878?

A. Well, they were printed a long time ago, and there were several of them printed, and it took a long time to distribute them; yes, we were distributing them at that time and before that time, too.

Q. But still it was not more than 15 months ago when you were distributing them?

A. Well, I do not believe it was more than 18; somewhere between 15 and 18, as near as I remember.

Mr. LE MOYNE: Look at the printing across the card and
813 state whether after such examination you do not remember that those were issued about the time you got out the session laws of 1877?

A. That would be two years ago, nearly; I do not remember; it looks, on the face of it, from what is stated there, but I do not remember; of course Mr. Myers' printer's receipts would show better than my memory.

814 And thereupon complainant read in evidence the deposition of Willis V. Myers, as follows:

Testimony taken before Henry W. Bishop, master in chancery of said court, Monday the 17th day of February, A. D. 1879.

Present: J. V. Le Moyne, Esq., solicitor for complainant, and James L. High, Esq., solicitor for defendants.

WILLIS V. MYERS, a witness called for the complainant, being duly sworn, was examined in chief by Mr. LE MOYNE, and deposes and says as follows:

Q. Are you the son of the complainant in this case?

A. Yes, sir.

Q. Look at the circular, "Exhibit A," to the deposition of G. K. Hazlitt, and state whether you ever saw that before, and what was done by you in regard to that circular.

A. Yes, I have seen that before; it was about the first of March, 1877, I mailed these to the trade.

Q. How many of them?

A. I could not tell you the exact number of circulars I sent;
815 I sent one to each book-seller, I remember, in the country; I do not know how many there are.

Q. Do you mean law-book sellers, or all book-sellers?

A. I think they deal in law books; I do not know for sure.

Q. Did you have a list?

A. Yes, sir.

Q. Can you tell about how many you sent?

A. I should not be positive as to the number; I think there must have been—I do not know the number at all. It was quite a long list, though.

Q. How were they sent?

A. By mail.

Signature waived by agreement of counsel.

816 And thereupon complainant read in evidence the deposition of George L. Myers as follows:

Testimony taken before Henry W. Bishop, master in chancery of said court, Monday, the 17th day of February, A. D. 1879.

Present: J. V. Le Moyne, Esq., solicitor for complainant, and James L. High, Esq., solicitor for defendants.

GEORGE L. MYERS, a witness for the complainant, being first duly sworn, was examined in chief by Mr. LE MOYNE, and deposes and says as follows:

Q. State how you were engaged during the year 1877.

A. I was in the employ of my father, E. B. Myers, selling law books for him.

Q. Look at the circular now shown you, marked "Exhibit A" to the deposition of G. K. Hazlitt, and state whether you ever saw it before, and where and when.

A. I saw the circular when it came from the printing office, and used it in the store in the way of folding, filling envelopes, and addressing.

Q. When was that?

A. It was in the spring of 1877.

817 Q. Did you send any of those circulars to any one; if so, to whom?

A. The day they were received from the printing office I enclosed the circulars in the envelopes and addressed them to the trade in Chicago—the book trade. I mailed a copy to each of the trade.

Q. State if you were present at any time at your father's store in the fall of 1876 or the spring of 1877 when any of the firm of Callaghan & Company were there; if so, state about what time it was and which of the firm came there.

A. I was present at probably the majority of the interviews, and I was in the store doing office work at that time. I was present at interviews from Andrew P. Callaghan and one or two from Bernard Callaghan and George W. Beck.

Q. When were these interviews; about what time?

A. Well, they extended through the fall, winter, and spring.

Q. The fall of what year?

A. That is, the fall of 1876 and winter and spring of 1877.

Q. Did you hear the conversation between the members of the firm of Callaghan & Company and your father? If so, state
818 what was the subject of conversation at those interviews.

A. My desk adjoined the desk at which the conversation took place. I was in a position to hear the interview—all that was said. The subject under discussion was the purchase of the copyrights and all interest in the books owned by E. B. Myers.

Q. Were the volumes named; if so, what volumes were they?

A. The volumes were named, and it was understood what the trade was to be for.

Q. If the volumes were named, state what volumes were named.

A. The trade called for volumes 32 to 46, inclusive, the copyrights, stereotype plates, and the printed stock.

Q. In the course of those interviews was anything said by Andrew P. Callaghan or Bernard Callaghan as to what they would do in case your father would not sell to them his interest in the books; if so, what did they say they would do?

A. They said if he refused to sell, to comply with their demands, that they would proceed to get out volumes for themselves.

Q. What did he say to that?

819 A. He said that he did not believe that they could publish volumes on which he held the copyright.

Q. Did they say they could or could not; what did they say they would do?

A. Andrew P. Callaghan was the chief trader during this time; he said he knew a way.

Mr. HIGH: Are you talking of some particular conversation at a particular time, Mr. Myers?

A. Yes, sir; the conversation that took place in February; along some time in February; probably the early part of it.

Mr. LE MOYNE:

Q. Go on and state what was said.

A. He said he knew a way by which the copyright could be avoided.

Q. How did he say it was?

A. Well, he mentioned no particular way of doing it; he merely said he knew of a way by which it could be done.

Q. Did he say they intended to do it that way, or how did they intend to do it?

A. He confined himself to saying that he knew a way by which it could be done without infringing on the copyright.

820 Q. Did he state what effect that would have on your father's copyright; if so, what did he say about it?

A. He said after he got his volumes out E. B. Myers' volumes would be worthless; therefore he had better sell.

Q. What did your father say to that?

A. He told him that his terms were so and so; that the value of the copyright and the Illinois Reports, which he owned, was so much, and he refused to sell for less than his price. Andrew Callaghan lost his temper and left the store.

Q. State whether anything was said by your father at that interview or at any of the interviews in the way of consent to their publication; if so, what was said in that respect?

A. In talking of the right to republish the volumes my father told him that if he infringed on his rights he would make it hot for him.

Q. State whether in those conversations the parties appeared to be amicable or friendly, or, if not, how; what temper was manifested?

A. Yes, sir; from the beginning of the conversation the
821 trade was carried on in a business-like manner; but Andrew P. pressed his point and became warmed up over it and generally left the store in disgust—in a rage—at not accomplishing what he came for.

Q. When was the last conversation that you remember between your father and either of the firm of Callaghan & Company?

A. I think Andrew P. was in the store along in March some time.

Q. What took place then in that respect?

A. He renewed the offer that he had made, whatever that amount was, and said that unless it was accepted right away that they would contract to have the work done and push it forward vigorously.

Q. What did your father say to that?

A. He said: "If you intend to do the work as you propose, fairly, I do not see that I can object to it; but if you interfere with my rights and attempt to make my property worthless I will prosecute you."

Q. Is that the last interview between your father and either
822 of the members of the firm that you know of?

A. That, I think, was the last interview at which I was present, excepting the last interview between Bernard Callaghan and father, which was along in the summer, some time in June. I think it was in June.

Q. Where was that interview?

A. At our store.

Q. What took place then between them?

A. The talk was confined chiefly to other books. The Illinois Reports were not much spoken of, but Mr. Callaghan was asked how the work was progressing, what volumes they had out, and I think he said that he could not give the volumes from memory; that he would if he would send up to the store, or something to that effect; he would supply us with a list of what they had out.

Q. Were you in the habit of going to their store; if so, how often?

A. I went there as little as possible, but probably twice a month, whenever business called me there.

823 Q. You think it was not oftener than twice a month?

A. One month it might have been three or four times, and I am quite sure during the summer of 1877 I was not in the store for a month or six weeks running. It varied considerably.

Q. The reprint of Callaghan & Company from 19 to 30—were you not buying them from them?

A. Yes, sir. We had occasional calls for them, and I think we bought—I have not looked up to see, but perhaps a dozen volumes of those 19 to 30.

Q. State whether you heard any conversation between either of the Callaghans and your father about an exchange; if so, what was said about exchanging volumes?

A. The first I heard of the exchange was between Andrew P. Callaghan, on one of his visits, and my father as to what price should be charged Callaghan for the volumes which he had in print of 39 to 46, and my father proposed as an exchange one of his volumes for one of their volumes, which they then had out—19 to 30.

Q. When was this conversation?

824 A. That was, I think, at one of the February interviews; I believe there were two in that month.

Q. Were you present at an interview between your father and Mr. Beck, from Callaghan & Company, in March, 1877?

A. I was.

Q. Did you hear a conversation that took place between them?

A. I sat right beside of Mr. Beck.

Q. What was said between them at that time about exchanging volumes?

A. Mr. Beck came to find what we were going to continue charging them for 39 to 46, and my father told him that he would charge them the same price for 39 to 46 that they would sell him Freeman's volumes for, namely, 47 to the end of his series.

Q. Was anything said at that conversation between your father and Mr. Beck or either of them, and, if so, what, in regard to your father giving them volumes for their reprints of 32 to 38?

A. There was nothing said, I am quite positive, about any exchange below 47 of their volumes.

Q. State whether at any of the interviews between either
825 of the Callaghans and your father any offer was made by either party, if so, which of them, for your father to give them volumes of his for their reprints of 32 to 38.

A. No such offer was ever made in my hearing.

Q. Did you hear any negotiation between them about an exchange for any of their reprints; if so, which of their reprints?

A. The reprints alluded to were called by volumes always, and when first the conversation took place my father tried to get a reduction on the "Underwood's edition," the first 18 volumes; after that he confined himself to a deduction on 19 to 30.

Q. State whether you ever had any conversation with the defendants, Sheldon Clark, in the summer or fall of 1877; if so, where it took place.

A. I met Mr. Sheldon A. Clark out West, in Des Moines, Iowa; it was in the latter part of December—November, 1877.

Q. State whether anything was said to him, if so, what, in regard to the objection of your father to their publishing any of his books.

826 A. The subject of the Illinois Reports was broached by Mr. Clark, and we alluded to a sale of some of our reports which I made in one of the Western Illinois towns. After that we got talking the subject over, and he told me what his expectations of profits were from the reprinting of the volumes, and also wanted to know what we would do with the stereotype metal of our books, as he considered them worthless. I told him that he had not seen the end of it yet; that before figuring up his profits he had better wait awhile.

Q. Did you tell him why?

A. I asked him if he thought they had a right to use a matter which E. B. Myers had paid for; he said he thought they had taken a way to get it so as to avoid any right which we had there. I asked him in what way the work had been done, and that he refused to tell me. I asked him if it was a matter of secret with him how the information was obtained to make up the books, and he said as far as telling me was it was a secret.

827 The cross-examination of the witness was postponed to Wednesday, February 19th, at ten o'clock a. m.

WEDNESDAY, *February* 19, 1879.

Met pursuant to adjournment.

Present: Same as before.

Direct examination — GEORGE L. MYERS resumed by Mr. LE MOYNE:

Q. Look at the postal card which has just been examined by Mr. Beckwith and state whether you know when that was printed, and if it was distributed how many copies were distributed?

A. It was printed in the spring of 1877, about the time the laws of 1877 were published; prior to the publication.

Q. Were any of them distributed; if so, how many?

A. I should say about 3,500 over the State of Illinois, to all the lawyers on the list, and in the city of Chicago.

Q. Did you mail any of them?

A. Well, personally, I addressed about 2,500, I think.

828 Q. Fix the time as closely as you can as to when they were so distribued by you.

A. Well, it must have been along about the middle of May—from the middle of May to the first of June.

Q. Of what year?

A. Of 1877.

Q. Do you know whether your father received any new volumes of the Illinois Reports between 32 and 38 after the fire?

A. He did.

Q. State how many volumes he received, if you know, as accurately as you can, and where they were kept.

A. I unpacked the volumes when they came from Albany; they were received at our residence, 1022 Wabash avenue, where the store was after the Chicago fire, and delivered from the dray in the barn.

Q. How many volumes were there, as near as you can remember?

A. There must have been from twenty to forty or fifty volumes, varying with the different volumes.

829 Q. Did you ever have any conversation in regard to the Illinois Reports with Andrew Callaghan, one of the defendants; and, if so, when and where?

A. I met him in the restaurant, the same restaurant where he says he met my father, and probably about the same time, in the spring of 1877, and the same conversation ensued between us as he records in his testimony in this case.

Mr. HIGH:

Q. Will you be kind enough to state what was said?

A. I enquired what progress they were making with their Illinois Report undertaking; told him I hoped he would make money out of it. That was the general drift of conversation; there was nothing of greater importance than that.

Mr. LE MOYNE:

Q. Well, you have been asked to state what was said between you, and not whether it was important or not. If you can repeat anything that was said by either of you on the subject of the Illinois Reports, now state it.

830 A. I do not think anything that was said between us would be considered of any importance whatever, as he gave me no information which I may state here.

Q. Can you remember anything that he said on that subject? If so, state it.

A. He was very vague in his replies to my questions; seemed to consider it a matter of secrecy, and said he was not at liberty to say anything about it.

Q. Were any volumes named?

A. Yes; when I enquired what volumes he had ready to sell he replied that he had several out between 19 and 31.

Q. In the conversation between Mr. Andrew P. Callaghan and your father did you hear Mr. Andrew P. Callaghan ask your father whether or not he would reprint volumes 32 to 38?

A. Yes, sir.

Q. What answer was made to your father at any of the interviews in the fall of 1876 or early part of the year 1877?

A. Andrew P. Callahan asked him if he intended to republish these volumes, and he told him that he did as soon as he could make it pay.

Q. Can you state when that was?

831 A. I think the conversation to which I now allude was in the fall of 1876.

Cross-examination by Mr. HIGH:

Q. Do you not know that the postal card to which your attention has been called was not printed or circulated until after some of the reprints of 32 to 38 by Callaghans had appeared?

A. No, sir; I had not seen the Callaghan & Company reprints previous to that; in fact, I had not seen any of them at all.

Q. Did you take any special pains to see them?

A. I took special pains to see them.

Q. Do you not know that your father bought them from time to time as fast as they appeared?

A. He bought them on the dates that are specified in the various testimonies given.

Q. As fast as they came out he would get a volume or two?

A. Well, that I cannot say. I do not know when they were published.

Q. You say it was the intention and purpose of your people

832 to get these volumes as fast as they came out, and you did try to get them?

Objected to.

A. I did not know when they came out.

Q. But you were trying to get copies of these volumes as fast as they came out, right along?

A. I was not trying to do anything in particular.

Q. Your father was?

A. He has told me he did.

Q. You know that, as a matter of fact?

A. I did not know it.

Q. You knew that he did get them as fast as they came out, as a matter of fact?

A. When he got a volume in the store I saw it.

Q. You knew there was a good deal of curiosity and interest to see them as fast as they came out?

A. Yes, sir.

Q. You were all interested in the mater, and discussed it frequently?

A. I was not discussing it particularly.

Q. You heard it talked over in the store?

A. No, sir.

Q. You heard your father talking it over, did you not?

A. No.

833 Q. Was it not a fact that your father and you and all of you were watching Callaghan & Company's reprints during the summer of 1877?

A. We had volumes 37 and 38.

Q. Besides that there were other reprints from 32 to 38?

A. I did not know they were going to come out.

Q. When did you first learn that?

A. Along about in August or September of that year.

Q. Do you not know that as early as June your father had bought one of these reprints?

A. No, sir.

Q. Do you not know that this postal card was printed and issued, if at all, after those reprints had appeared, or some of them?

A. I know that the postal card was issued before the publication of the laws of 1877 to announce it.

Q. When were the laws of 1877 published?

A. Well, I suppose they were published in June; about the first of June they are generally published.

Q. You are kind of guessing at it.

834 A. I am not guessing at it.

Q. Do you not know, as a matter of fact, that this was printed after some of Callaghan & Company's volumes had appeared, and you had it in your store?

A. My impression is that it was published before.

Q. It is only an impression?

A. That is to say, I do not know whether it was published before or after.

Q. Have you any knowledge as to when you published the session laws of 1877, during that year?

A. I could tell by looking up the books.

Q. You cannot tell now, without looking up the books, can you?

A. Well, I sold that in June—about the middle of June; so that work must have been published before the middle of June.

Q. That is your reasoning, but you do not know of your own knowledge, do you?

A. I took orders for them in June.

Q. May you not have taken orders before the book was published? Is not that common?

A. No, sir; for I think they were delivered about the time I sold the book.

835 Q. Mention the name of one lawyer to whom you sent this postal card, of your own recollection.

A. Well, would you like to have an important lawyer or just an out-of-the-way lawyer?

Q. Anybody; a cheap lawyer or anybody else. Mention one lawyer to whom you sent this postal card, of your own knowledge and recollection.

A. George S. Eldredge, of Ottawa.

Q. Mention two lawyers; give us another.

A. E. F. Bull.

Q. Do you recollect any others?

A. Yes, sir.

Q. Of your own knowledge and present recollection?

A. Of my own knowledge.

Q. You swear positively that in the summer of 1877 you sent two of these circulars to the gentlemen you have named, one to each?

A. I did, sir.

Q. In your direct examination on Monday you were asked the question: "State whether or not anything was said by your father at that interview, or at any of the interviews, in the way of consenting to their publication. If so, what was said in that respect
836 (referring to interview with Andrew Callaghan)?" Do you now recollect what, if anything, was said on that matter?

A. The same as given in my testimony there in reply to that question.

Q. What was that?

A. I do not suppose I can give you the language used there, if that is what you want.

Q. Well, what did your father say on that point? Give his exact words.

A. Just repeat the question and I will tell you.

Q. "State whether anything was said by your father in that interview, or at any of the interviews, in the way of consenting to their publication. If so, what was said in that respect?"

A. He told them if they infringed on his rights in any way that he would prosecute them.

Q. That was the language used, giving the words as near as you can—that he would prosecute them?

A. That is the language used, as near as I can give it.

Q. Now, fix the time and place and those who were present when that language was used.

A. On one occasion, E. B. Myers, Andrew P. Callaghan, and myself.

837 Q. When and where?

A. In the spring of 1877.

Q. Did that conversation have reference to volumes 39 to 46?

A. It had reference to volumes 32 to 46.

Q. Were any particular volumes mentioned or specified by your father?

A. They were.

Q. Now, what did he say about volumes 32 to 46?

A. He said that he would republish volumes 32 to 46 when he could make it pay.

Q. What else? Tell the whole story.

A. That is all I have to say.

Q. That is all that he then said about 32 to 46?

A. I am not saying it is all that he said, but it is all that I repeated of the conversation.

Q. Give us the rest of it.

A. Andrew P. Callaghan came to the store and renewed one of the former propositions to buy all the interest in the Illinois Reports.

Q. At what time was this?

A. Along in the early part of the spring; perhaps along in February and March.

838 Q. You are a little uncertain about the time, I suppose?

A. Not at all uncertain. I might say positively that I think it was in March. He wanted to buy the copyrights of 32 to 46, and he wanted everything. He wanted a full assignment of the interest of E. B. Myers in the set in order that he might control the set, as he then said. E. B. Myers told him that he did not offer what he considered his interest worth; that his price was so much money, about six or seven thousand dollars. Andrew said that they would never give that price for them, and sooner than pay that price he would get the volumes up for himself. "Very well," said E. B. Myers, "if you don't want them let them alone; I can use them." The interview terminated.

Q. That is all that you recollect of it?

A. Yes, sir.

Q. Why didn't you tell us these things Monday?

A. I was not asked to tell them.

Q. Do you recollect of making an affidavit in this case, filed on the 12th of January, 1878, or thereabouts?

839 A. Yes, sir; the affidavit will show when it was made and filed. It was about that time.

Q. Why didn't you mention these things in that affidavit?

A. I have no particular reason for not putting them in. The affidavit was drawn for me. I did not draw the affidavit myself.

Q. Didn't you know for what purpose the affidavit was drawn?

A. I did at that time, but at this remote period I cannot say for what it was drawn, though I suppose it was for use in the argument on the motion for the injunction.

Q. And don't you know that you were informed that the affidavit was to be used for the purpose of showing that your father had threatened to prosecute the Callaghans if they went on with these reprints?

A. That was what I stated in my affidavit, that E. B. Myers told Callaghan that if he did the work that he would prosecute him.

Q. And you knew that you were making the affidavit for the purpose of proving that fact?

A. I made the affidavit and I signed it.

Q. Why didn't you mention all of these things that you

840 have mentioned to-day in the affidavit?

A. As I told you before, I did not draw the affidavit. The affidavit was drawn and submitted to me for my approval, and I signed it.

Q. That is the only reason why you did not put them in the affidavit?

A. That is the only reason. I knew more when I signed the affidavit than I put in the affidavit.

Q. You did not tell all you knew?

A. I did not tell all I knew.

Q. And you did not tell all you knew on Monday when Mr. Le Moyne examined you in this matter?

A. I did, virtually; yes, sir.

Q. Virtually, but not practically?

A. Practically, I did. I told as much Monday as I have told to-day.

Q. You think you did?

A. I think I did.

Q. You were sworn on Monday to tell the whole truth, were you not?

A. I told just as much as I was asked to. Mr. Le Moyne did not tell me to go ahead and repeat the entire conversation. He questioned me on certain points.

Q. In your examination Monday you use this language, with reference to a statement made by your father to Andrew P. Callaghan, about the month of March: He said, meaning your father, "If you intend to do the work as you propose, fairly, I do not see that I can object to it; but if you interfere with my rights and attempt to make my property worthless, I will prosecute you." Why didn't you mention that fact in your affidavit filed a year ago in this cause?

841

A. I shall have to refer you to the reason I gave a few moments ago.

Q. Did you think you were virtually telling the whole story in your affidavit a year ago?

A. Well, I am not versed in the law, and the affidavit was put into my hands and I signed it, as it contained the truth. I signed only what I knew to be true.

Q. Did you think, at that time, that it contained the whole truth?

A. I was not asked to tell the whole truth.

Q. Only told a part of the truth?

A. I was not asked to tell any of it.

Q. You told as much as suited your purpose and convenience at that time, I suppose?

A. No, sir.

Q. Did you, on the 12th of January, when you swore to this affidavit or when it was filed in this case, have in mind or know that your father had used any such language threatening to prosecute the Callaghans because of reprinting these volumes?

841½

A. I did, sir.

Q. Why didn't you tell somebody at that time that he used such language?

A. I told in my affidavit.

Q. Did you tell Mr. Le Moyne at the time that fact?

A. I told Mr. Le Moyne.

Q. Did you tell your father?

A. He knew it already.

Q. Is it in your affidavit?

A. Yes, sir.

Q. That your father threatened to prosecute them?

A. He said he would make it hot for them.

Q. He then said that he would make it hot for them?

A. Yes, sir.

Q. And now you say the language was that he would prosecute them?

A. There were several forms of language used.

Q. How many forms were used?

A. Just such as might come up in ordinary conversation.

Q. You don't recollect what the forms were?

A. I recollect two of them.

Q. The two that you have named this morning?

842 A. Yes, sir.

Q. In the conversation that was had between the Callaghans and your father in the spring of 1877, and between Beck and your father, about March of that year, with reference to exchanging, were any particular volumes spoken of when your father talked about an exchange?

A. There were.

Q. Didn't he say generally that he would exchange his volumes 39 to 46 for their reprints?

A. He said that, and he also said that Andrew P. had refused to exchange his reprints for E. B. Myers' 39 to 46.

Q. And he was trying to throw the blame onto Andrew for the refusal?

A. He was not trying to throw the blame onto any one.

Q. There was some feeling or friction, wasn't there, about Andrew?

A. There was no friction.

Q. Everything was lovely and good-natured?

A. Yes, sir; and done in a gentlemanly manner. The interview with Beck was confined, as I recollect, wholly to volumes 47 to the end of Mr. Myers' series.

Q. Wasn't there a previous interview that you did not witness?

843 A. There may have been.

Q. You only heard one conversation between Beck and your father on that point?

A. Well, Beck was in the store considerably.

Q. But you only meant to testify on Monday about one conversation between Beck and your father about the interchange?

A. Well, that was the only important interview; the rest of them was mere light talk.

Q. You are now only testifying about what transpired at one interview between Beck and your father?

A. That interview that you called my attention to—the one given in my testimony on Monday.

Q. You have spoken this morning of certain volumes that you got from Albany after the fire?

A. Yes, sir.

Q. Will you specify some of those volumes?

A. There were five or six cases of them unloaded from the dray, and they contained some of the twenties, say 27, 28, and 29, I recollect distinctly; and then thirties; I think a complete set from 30 to 38.

Q. How many copies of each of the volumes 32 to 38, in-
844 clusive, did you get from Albany in that way and at that time, beginning at 32?

A. Well, I think there was not less than twenty copies of one volume, and it may have gone as high as forty or fifty of some, for it made a large package when wrapped; in fact, some volumes made three or four packages.

Q. If there was more than twenty of any copies were they not the copies prior to 31?

A. No, sir.

Q. Did you not have more of them prior to 31 and 32 than you did afterwards?

A. We had fewer of below thirties.

Q. Was it not the fact that whatever copies you got from Albany in this way after the fire were a few sheets that your father had sent down there before the fire to be bound?

A. That I know nothing about.

Q. Was he not in the habit of sending prior to the fire a few sheets to Albany to be bound?

A. Well, merely from hearsay what I have heard him say. He sent all his work to Albany before the Chicago fire to be bound.

Q. Including the Illinois Reports?

A. Yes, sir.

845 Q. And whatever copies he may have got from Albany he probably got in that way?

A. Well, I do not know, only what I am told. I know nothing of my own knowledge. I know that I unpacked the books.

Q. In your direct examination on Monday you testified concerning an interview betweeh Bernard Callaghan and your father about the month of June, 1877, and used these words: "The Illinois Reports were not much spoken of, but Mr. Callaghan was asked how the work was progressing, what volumes they had out, and, I think, he said that he could not give the volumes from memory; that if we would send up to the store, or something to that effect, he would supply us with a list of what they had out." You recollect that, do you?

A. Yes, sir.

Q. Did you send over and get that list?

A. No; I do not think I did. I think, as I recollect, my father asked him: "Well, Mr. Callaghan, how do you get along with your enterprise?" alluding to the reprinting of the Illinois Reports,
846 and, I think, he mentioned 19 to 30, but I am quite positive there was nothing said about later than 30, or, I should say, 31, where they were reprinting.

Q. They just spoke generally about the prints?

A. They did not; the volumes were named as being 19 to 31, and Mr. Callaghan said that if he would send up to the store by a messenger he would give us the volumes that were out; and I recollect now that some time after that I did send John up with a little note on one of our letter headings asking that they would give us a list of such volumes as were out, and I recollect quite well that

I examined it when it came back, and there were six or seven volumes on it and they were all in the twenties, ranging from 19 to 31, and I made a minute of it on my note book.

Q. But they gave you whatever information you asked for, and gave it freely?

A. Yes, sir; of those volumes right there, the list, and I took the schedule to the office of an attorney who had subscribed for the works, and I found that the list there tallied with what he had.

847 Q. You were watching it pretty closely, were you not, to see how they came out?

A. No; I just happened to be in the office—I can state the gentleman's name—and I just merely looked in the case to see that the volumes were out.

Q. What was your special anxiety in sending over to get information about what volumes they had out?

A. In reading letters and answering the enquiries about the Illinois Reports it was necessary to be posted on it, so as not to misinform the men that we wrote to as to what volumes could be furnished. If a volume had been reprinted I did not want to tell the party that the volume was scarce and out of print.

Q. Were enquiries made of you during that summer about the reprinting of their volumes 32 to 38?

A. To such enquiries I wrote that we had the volumes in press, and that they would be out inside of 60 or 90 days, or whatever it suited me, by a calculation that I made myself.

Q. You knew that you did not have them in press?

A. I knew we had.

848 Q. Did you not know that you did not have any but 37 and 38 in press?

A. 36 was to go to press.

Q. Did it go to press?

A. No, sir.

Q. Then you did not tell these parties who were enquiring of you the whole fact about it?

A. In answering a letter to an attorney in the country I would tell him what volumes of the Illinois Reports we could furnish, and we could generally furnish all of them, but it was understood throughout the country that a good many volumes were out of print, and most letters would ask when were the volumes to be produced, and to some inquiries I would say that Callaghan & Company were reprinting 19 to 31, and that we were reprinting 32 to 38 in order to complete the set.

Q. When you went to the lawyer's office mentioned a few moments ago did you not there find some of Callaghan's volumes, 32 to 38, on the shelf?

A. I have no recollection of doing so. If I had I should have reported it to headquarters.

Q. You may have seen them, but you do not recollect?

A. I think I can state that I did not.

Q. You are a little misty about that?

849 A. I am not misty at all.

Redirect examination by Mr. LE MOYNE:

Q. On the postal card that you have been examining the price of the ten volumes is struck out in ink. State whether that was done before or after the distribution of the postal cards that you have testified to.

A. The postal card as originally mailed was as it came from the press. The ink erasion there was made by myself; it must have been along in the winter some time. I struck out a few and handed them to Beckwith and asked him to strike the price out of any that he sent out after that. I might say that was about the beginning of 1877—along in the winter some time.

Recross-examination by Mr. HIGH:

Q. In this postal card this language is used: "I have now ready for delivery volumes 37 to 46, inclusive, Illinois Reports." Refreshing your recollection by that, do you now remember that this postal card was not printed until after your father's reprint of 37
850 and 38 had appeared?

A. No; that was printed before the volumes were really out; but there was one delay and another, as there always is in a printing office, and I believe the volumes were somewhat delayed, even to two or three weeks behind when we expected to get them out.

Q. This was not quite true, then?

A. By the time a lawyer in the country made up his mind to buy them we could have furnished the volumes.

Q. It was not quite true when you sent it out, was it?

A. Yes, sir.

Q. You had these volumes ready, then, at the time you sent it out?

A. I could send him 37 and 38 if he wished them second hand, and the reprints as soon as they were ready; we had the volumes second hand in the store.

Q. If you could send 37 and 38 second hand, why were you reprinting them?

A. Well, they turned over—there was quite a supply of them. I picked up a good many in the country and sent them in.

Signature waived by agreement of counsel.

851 And thereupon complainant read in evidence the deposition of Andrew P. Luse, as follows:

852 Testimony taken before Henry W. Bishop, master in chancery of said court, Monday, the 17th day of February, A. D. 1879.

Present: J. V. Le Moyne, Esq., solicitor for the complainant, and James L. High, Esq., solicitor for the defendants.

A. P. LUSE, a witness for the complainant, being first duly sworn, was examined in chief by Mr. LE MOYNE, and deposes and says as follows:

Q. What is your name and occupation?
A. My name is A. P. Luse; I am a type-founder.
Q. Give the name of your firm.
A. Marder, Luse & Company.
Q. How long have you been engaged in that business in Chicago?
A. The present firm has been organized a little over ten years.
Q. Did you make any contract in the spring of 1877 with E. B. Myers & Company to stereotype any of the volumes of the Illinois Reports; if so, when and what volumes?
A. I think that was the year; volume 38.
853 Q. State when you made the arrangement with them to do the work.
A. Somewhere about the first of May, I think. It is charged on our books June 30th.
Q. Was that when the work was finished?
A. That was when the work was finished and delivered.
Q. State whether Mr. Myers, prior to that time, if so, how long, had spoken to you about doing any of the other volumes, and what volumes?
A. I do not remember how long before that, but he did talk to me about getting up a lot of those volumes for him that he said were his to fill in a gap between his and somebody else's.
Q. Do you remember whether it was 32 to 38?
A. I think that was it. I do not remember the numbers.
Q. When was this conversation between you and him—about when; before or after this work was done you have mentioned?
A. It was before this work was finished.
Q. How long were you on that work—can you tell?
A. About three months.
854 Q. When you were doing this work for him were you doing any work for Callaghan & Company?
A. Yes, sir.
Q. What was it?
A. We were doing volume 30 for Callaghan & Company.
Q. Volume 30 of what—Illinois Reports?
A. Yes; Illinois Reports.
Q. While this work was being done by you for Mr. Myers state whether any of the firm of Callaghan and Company were in your establishment where this work was being done.
A. Yes, sir.
Q. How often?
A. Well, I could not tell that; they run in and out frequently, but one of the firm of Callaghan & Company was in the stereotype foundry with me at one time when Mr. Myers was with me; we went up there together; one of the Callaghans was up there; I do not know which one it was; I do not know his name.
Q. State whether they knew that you were then stereotyping this volume for Mr. Myers.

A. I could not state that positively, but I do not see how
855 they could help knowing it. Mr. Myers talked about it with me.

Q. Talked to them about it?

A. Talked with me about it.

Q. At that time?

A. Yes, sir; at the time.

Q. At the time that you were there with Mr. Callaghan and him?

A. Yes, sir.

Q. Mr. Myers was talking to you then about the volume you were publishing?

A. Yes, sir; about his volumes; what numbers he owned. He owned a certain number, and Mr. Callaghan was over in another portion of the room; of course, he did not hear what we were talking about.

Q. Was this in the room where the work was being done on their volume and one Myers'?

A. Yes, sir; it was in the room where this work was being done—one large room.

Q. State whether or not the plates of Myers' volumes and Callaghan's volumes were kept near together on the shelves there.

A. Well, I do not know how close together they were.

Q. They were there at the same time, were they not?

856 A. Yes, sir; they were being done at the same time. Callaghan's volume was charged on May 31st and Myers' volume was charged June 30th. They were both in there at the same time; one was volume 30; that is Callaghan & Company's, and volume 38, Mr. Myers'. They were both very nearly the same size.

Cross-examination by Mr. HIGH:

Q. Is it not true that you were at that time carrying on a large and extensive stereotyping business?

A. Yes, sir; we were doing a good deal of work at that time.

Q. Is it not true that you had many books then in your house for the purpose of stereotyping?

A. We had quite a number. I do not know how many we had.

Q. Would an ordinary observer, being in your stereotyping foundry at that time and seeing the plates of Mr. Myers' volume, have known what they were unless he examined them closely or with the intention of inspecting them?

A. He could not tell by looking at the plates—the heads of
857 them. A person having work done probably might do that, but just by looking at the plates on the shelf he could not tell anything about them by that.

Q. He could not tell, without a close inspection of them, what they were?

A. No.

Redirect examination by Mr. LE MOYNE:

Q. Did you not have plate proofs on your table of both books at the same time?

A. Our foreman may have had; I do not know whether he had or not. Mr. Cunningham was our foreman at that time, I think—yes; he is with us now and can tell all about that. I suppose there was an amicable arrangement between them; one knew how far he had to go and the other knew where he commenced.

Recross-examination by Mr. HIGH:

Q. I understand that Mr. Myers made no contract with you for any of the volumes prior to the one that you stereotyed?

A. Well, I do not remember about that.

858 Q. As a matter of fact, that was the only volume that you stereotyped for him during that year?

A. We have done a good deal of work for Mr. Myers; I could not tell without referring to the books.

The signature of the witness to the above deposition was waived by agreement of counsel.

And thereupon complainant read in evidence the deposition of George B. Murray as follows:

859 Testimony taken before Henry W. Bishop, master in chancery, Friday, the 21st day of February, A. D. 1879.

Present: J. V. Le Moyne, Esq., solicitor for complainant, and James L. High, Esq., solicitor for defendants.

GEORGE B. MURRAY, a witness for the complainant, being first duly sworn, was examined in chief by Mr. LE MOYNE, and deposes and says as follows:

Q. What is your name?

A. George B. Murray.

Q. How long have you been in the employ of the Legal News Company?

A. I do not remember exactly how long; I know I was there ever since the first volume began.

Q. Ten or twelve years?

A. It is in its eleventh volume now, and I was there at the time of the first volume, I know.

Q. What is your occupation or position there now?

A. I am book-keeper there now.

860 Q. Do you know what volumes of Illinois Reports the Chicago Legal News Company printed for Mr. Myers in 1877? If so, state when they began and when they finished.

Mr. HIGH:

Q. Were you book-keeper during 1877?

A. No, sir; I was not, but I helped on the books all the time. At the end of every month our book-keeper could not keep them up, and I stayed behind time, and we got the books all up together.

Q. Have you any personal knowledge of the matter concerning which you have just been asked?

A. Yes, sir; I am acquainted with everything in the office. I know about all the books, and I know how they were kept. I learned every book-keeper that went in there how to keep the books that they have been keeping.

Q. (The last question by Mr. Le Moyne was then read to the witness.)

A. The Legal News printed the 37th volume of the Illinois Reports. It came in on our job book May 15th to 22nd. It was not dated. It came in between May 15th and May 22nd, 1877, and it was finished July 24, 1877, and charged on that date.

Mr. Le Moyne:

Q. State whether they did not print 38 also, and, if so,
861 when that was finished, for Mr. Myers.

A. I did not bring any memorandum of 38.

Q. Can you state by an examination of the books of said company when 38 was finished by Mr. Myers?

A. I have not looked, sir. I do not know whether we did it at all or not.

Q. Can you state by an examination of the books?

A. Yes, sir; I think I can; I am not sure.

Q. State whether the Legal News Company printed either of the volumes 37 and 38 of the Illinois Reports for Callaghan & Company during 1877, if so, when did they receive and when finish either of said volumes?

A. We printed both volumes for Mr. Callaghan, 37 and 38; 37 came in August 15, 1877.

Q. When was it finished?

A. September 11, 1877, and 38 was finished October 12, 1877. When it came in I do not know. I did not look that up.

Q. I will ask you to examine the books and see if you can ascertain whether they printed 38 or not for Mr. Myers; if so,
862 when it was received and when it was finished.

A. I will.

The examination of witness was suspended while he went to examine the books.

Upon his return the direct examination was resumed by Mr. Le Moyne as follows:

Q. Having examined the books of the Legal News Company can you testify whether they printed volume 38 for Mr. Myers? If so, state when it was received and when finished.

A. We did the press-work for volume 38; it was finished July 24th or 25th, 1877. When it was begun I cannot find out.

Q. Does the job book of the Legal News Company contain a record of the work as it comes in and goes out?

A. It is supposed to; yes, sir.

Q. All the work is entered on there as it comes in and goes out?

A. Well, it is supposed to. I do not know whether it is all done or not.

Q. You do not know whether it all goes on there?

A. I do not know whether it all goes on there or not.

863 Q. Are these dates that you have given taken from that book?

A. From the job book and the ledger both.

Cross-examination by Mr. HIGH:

Q. Have you examined the books of the Chicago Legal News Company to see when volume 38 was received from Callaghan and Company?

A. Yes, sir; it was received July 26, 1877.

Q. Have you examined the books of the Legal News Company to determine when volume 37 was received from Callaghan & Company?

A. Yes, sir.

Q. When was it?

A. It came in on the job book August 15, 1877.

Q. Do you not know as a matter of fact that the Legal News Company delayed the printing of one of Callaghan's volumes—37 or 38—while they were printing one of Mr. Myers' volumes—37 or 38?

A. No, sir; I do not know anything about it.

864 Q. It might have been done without your knowledge.

A. Yes, sir.

Q. Is it not true that the job book of the Legal News Company during the year 1877 is very defective in the matter of dates, and that there are many places where no dates appear for a large number of days consecutively?

A. Not for a number of days; no, sir; from one page to another it might. Most generally the pages are filled up pretty near every day—one page filled up and part of the next one.

Q. Are there not frequently several pages in succession where no date appears to indicate the time?

A. I have not noticed that.

Q. Did you make this memorandum that you have referred to?

A. Yes, sir; I made that myself.

Signature waived by agreement of counsel.

It is stipulated by counsel for the respective parties that to the depositions of the witnesses on either side, where the witnesses do not wish to come in and sign them, the signatures are waived.

865 And thereupon complainant read in evidence the deposition of Eugene B. Myers as follows:

Testimony taken before Henry W. Bishop, master in chancery, Friday, the 21st day of February, A. D. 1879.

Present: J. V. Le Moyne, Esq., solicitor for complainant, and James L. High, Esq., solicitor for defendants.

EUGENE B. MYERS, the complainant, was recalled on his own behalf, and, being examined in chief by Mr. LE MOYNE, deposed and said as follows:

Q. Did you hear Andrew P. Callaghan testify in this case?

A. Yes, sir.

Q. He testified that you told him November 26, 1876, that you would not reprint volumes 32 to 38; is that correct?

A. Not altogether. I told him at that time that I would not reprint them then, as I was fearful that the enterprise might not be profitable.

Q. How frequently were the meetings between you and the Callaghans in the fall of 1876 and the spring of 1877?

A. They were very frequent.

Q. At whose instance or seeking were those interviews?

A. It was wholly on their part. I was not desirous of nego-
866 tiating with them in regard to the Illinois Reports; they kept coming to my store and kept at me.

Q. Did you ever go to their store?

A. Never but once.

Q. When was that once?

A. That was about the first of June, 1877; after being repeatedly urged by Mr. Bernard Callaghan I went down there.

Q. Was that the first time that you had ever been to see them about this matter?

A. That was the first time.

Q. Did they ask you to make an agreement with them to republish the Illinois Reports; if so, what answer did you make to such application?

A. Well, they asked me to agree to reprint my volumes 32 to 38, but I did not consider them reliable persons to make a contract with, and rather avoided any conversation in regard to the Illinois Reports. We were competitors in business, and it was quite essential that I should retain my interest, because if I had sold out my interest to them, of course, I would have been compelled to pay their price for them.

867 Q. In carrying on your business was it necessary to have the Illinois Reports?

A. It was quite necessary; it was an important feature in my business to control as many volumes as possible.

Q. Did you ever make any effort to sell them your copyrights?

A. I never did. I did not for the reason that I had entered into an arrangement or an agreement with Mr. Freeman, the reporter, who owned from 47 to the end of the series. This arrangement was made in connection with Soulé, Thomas & Wentworth, law-book publishers, of St. Louis, in which it was understood that Mr. Freeman was to print volumes 19 to 31, inclusive, and I was to produce volumes 32 to 38, inclusive, as I already had 39 to 46, inclusive; and in pursuance of that arrangement Mr. Freeman sent to me the circular which is attached to his deposition.

Q. You mean the circular announcing his intention to republish?

A. Yes, sir.

Q. State about what time Mr. Freeman sent you that circular.

868 A. In the early part of February, 1877. I know that it was about the time that I issued my circular. It was followed very soon afterwards by another circular issued by him.

Q. Did you have any correspondence at that time with Mr. Freeman in regard to the copyrights of these volumes? If so, state about what time, whether it was about the time of these interviews with the Callaghans, as testified to by them. If you have any letters on that subject from Mr. Freeman I will ask you to produce the same.

Objected to as not matter in rebuttal.

A. I had correspondence with Mr. Freeman in regard to the republication of the volumes out of print at various times during the winter of 1876–'7 and the spring of 1877. Here (producing paper) is one letter, dated January 12th, 1877; here is another, dated February 15, 1877; here is another, dated March 21, 1877.

The letters produced by the witness were offered in evidence by complainant's solicitor and were marked and attached as exhibits.

869 Q. Do you know from anything that Mr. Andrew P. Callaghan has said to you whether Mr. Freeman told him of the arrangement between you and Freeman at the time that he made this arrangement in the spring of 1877 with Mr. Freeman?

A. Mr. Callaghan told me at the interview in March that Mr. Freeman had explained this arrangement; that he had assigned that the reason for my not selling the plates to him was because he had this agreement between Freeman, Soulé, Thomas & Wentworth, and myself in regard to the reproduction of the volumes which were out of print, and Mr. Freeman had exacted a promise from me that I should retain my interest in volumes 32 to 38, unless I sold them to Mr. Freeman.

Q. Did you have any reason to believe that Callaghan & Company would reprint your volumes?

A. No; I never had any reason to believe that they would. I believed that they were making threats that they would reprint my volumes in order to beat me down to their terms. I never had any

870 idea at all; never supposed that they would attempt to reprint my volumes.

Q. Did you make any enquiry of them or authorize any one else in your employ to make enquiry as to when they would have any of the reprints of your volumes ready?

A. No; I never did. I may have and probably did ask them how they were progressing with the reprints prior to 32, because there was demand for them, in case we needed their volumes to fill orders.

Q. Were you buying from them quite a number of the reprints of their volumes prior to 32?

A. Yes, sir; a good many.

Q. Can you state about how many during the years 1876 and 1877, prior to the filing of this bill?

A. Well, from one to two hundred volumes in all.

Q. How many of their reprints of volume- 32 to 38 did you ever buy prior to the filing of this bill?

A. On an examination of their account and invoice I find that we had three copies of the reprints, from 32 to 38, inclusive. We had a volume of 32, a copy of 35, and a copy of 33.

871 Q. Are those the same books that we have had here as exhibits?

A. Yes, sir; I believe so.

Q. In your conversations or negotiations with the Callaghans about an exchange of your volumes for theirs were their reprints of 32 to 38 ever included or named?

A. Never.

Q. Or arranged for by you in any way; if so, what?

A. They were not alluded to in any manner. The conversation for exchange was entirely in regard to volumes prior to volume 32 and to volumes 47 to the end of the series.

Q. At the time of the conversations in regard to exchange had you any knowledge that they had out any of the volumes of which you claim the copyright?

A. I had not previous to the summer of 1877. They said that they were getting them out and explained to me that they had a way of preparing them so as not to infringe upom my copyright.

872 Q. Is it true that at the interview in Callaghan's store in June, 1877, that you said to Mr. Bernard Callaghan that you did not care what they did with volumes 32 to 38?

A. No, I never said so; and I cannot understand how they got the impression. Mr. Callaghan is certainly mistaken about my saying anything of the kind.

Q. Is it not a fact that at that time you had commenced some of those volumes?

A. Yes, sir; I had commenced, and they must have been aware of it, because my 38, which was commenced in April, was being stereotyped by Marder, Luse & Co., and at the same time they were stereotyping volume 30 for Callaghan & Co., and we were both of us out and in their establishment, their room where the stereotyping was done, and the proofs of the plates were lying on the foreman's table, lying side by side, so that I saw theirs and they certainly must have seen mine, and must have known that my volumes were being stereotyped there.

Q. When was that?

A. It was in the months of May and June.

873 Q. Do you know when Marder, Luse & Co. got through with your volumes?

A. They finished my 38 about the 20th of June.

Q. It must then have been prior to that time?

A. It was prior to that time.

Q. At the time of this June interview, had you not incurred considerable expense already in preparing for publication the two volumes, 37 and 38?

A. I had; 38 was about finished, and volume 37, which was commenced by the Legal News Company in May, was finished in July.

Q. Well, would or would it not have seriously diminished the value of your volumes if they had republished theirs?

Objected to as improper rebuttal.

A. Certainly; their volume was intended to take the place of mine.

Q. Do you know about the circular attached to Mead's deposition as "Exhibit A" being received by any of the book trade?

Objected to as improper rebuttal.

874 A. After hearing Mr. Callaghan's testimony I wrote a letter to Baker, Voorhees & Co., of New York, asking them if they had received my list of publications, dated March 1, 1877; if so, if they would be kind enough to send it to me. Here (producing letter) is their reply, with a copy of the circular attached.

Answer and reply and accompanying documents objected to as not proper rebuttal and as incompetent.

A. (Continuing:) I have no doubt that they received that circular about March 1, 1877, and that all other law-book sellers received a similar circular.

Q. Look at the circular marked "Exhibit B" of G. K. Hazlitt's deposition, being the one which Mr. Hazlitt said had the pencil corrections made by himself, and state where that came from.

Objected to as improper rebuttal.

A. This circular I took from Hazlitt & Reed's, the printers, wire file, on which it hung.

Q. When?

A. It was within the last eight months. I do not remember the exact date.

875 Q. Can you tell when the circular or postal card, "Exhibit B" in the deposition of Mead, was printed and issued?

Objected to as improper rebuttal.

A. This postal card was printed in the summer of 1877, I think, about the month of June or a little earlier. It was prepared a litile in advance of the publication of volumes 37 and 38.

Q. Did you hear Mr. Andrew P. Callaghan testify in this case?

A. I did.

Q. State whether your recollection of the interview between you and him agrees with his; and, if not, state wherein it differs.

A. I remember meeting Mr. Andrew Callaghan at a restaurant on Dearborn street. I presume that it was about the time that he stated in his testimony we had some conversation in regard to Illinois Reports. I think I asked him how they were progressing with the volumes which they owned and had announced the reprinting of. I also asked him very likely—I do not remember—about vol-

876 umes 32 to 38. I think I asked him how they were having them prepared, and he explained that they were having new head-notes and new indexes, etc.; at any rate, in such a way as that they would not infringe on my copyrights. I think I said to him that they had better look out that they did not interfere with my interests.

Q. Was there any reason why your bill in this case was not filed sooner? If so, give it.

Objected to as improper rebuttal.

A. Well, shortly after the 32nd volume appeared I think I went to my attorney and mentioned the fact to him that they were re-printing my volumes, and that he suggested that I should have a thorough examination and comparison made, which I did. Some time afterwards I obtained other volumes and made a comparison, and was satisfied that they had prepared their books from mine. It took considerable time to do that. Mr. Le Moyne may have been delayed in getting his bill ready, but I was very anxious and,
877 I think, hurried him up somewhat to stop the publication. There was no other reason of delay.

Q. I will ask you if you can fix the date when you got volumes 37 and 38 from the printers?

A. In the month of July, 1877, I find that I paid them for the work on the 26th day of July, 1877, for both volumes 37 and 38, for the stereotyping of one and for the printing of both.

Q. State if you have a letter-press copy of a letter written by you to Mr. Freeman March 20th, 1877, to which his letter of March 21st is an answer; if so, please attach the letter-press copy or a copy of it hereto.

Objected to as improper rebuttal.

A. I presume I have.

Cross-examination by Mr. HIGH:

Q. Have you any letters from Mr. Freeman other than the three which you have offered in evidence this morning relating to the same matter?

A. I will make a search for them.

Q. And submit them for inspection?

A. Yes, sir.

878 Q. During these interviews with the Callaghans from time to time during 1876 and 1877 you did make some offers to them at various times to sell your interest in volumes 32 to 46 of Illinois Reports?

A. Never previous to the June interview, when they came into my store. I says: "If you have any offers to make put it in writing and I will consider it."

Q. You did entertain and consider offers made by them previous to the June interview, did you not?

A. I remember saying if they would make an offer I would consider it. I think they made some offers; I know they did, and testified so before.

Q. And offers were talked over and considered between you prior to the June interview, were they not?

A. I do not think they made any offer previous to March. My recollection is that at the interview in March, in my store, Andrew P. Callaghan made an offer subject to the approval of his partners, not a distinct offer, and declined to put it in writing.

879 Q. But it was talked over and discussed between you at that time, was it not?

A. The matter of Illinois Reports was discussed; in fact, it had got to be kind of a nuisance. After Andrew lost his temper the elder Callaghan took it up and he came at me repeatedly, and finally induced me to go down to their store, which was about the first of June. I think it was on the first day of June. I know I went to Spingfield a day or two afterwards.

880 SATURDAY, *February* 22*nd*, 1879—10 o'clock a. m.

Met pursuant to adjournment.

Present: Same as before.

E. B. MYERS' cross-examination resumed by Mr. HIGH:

The WITNESS: I produce Exhibit — as the letter referred to yesterday, to which the one written by Freeman of March 21st is an answer.

Mr. HIGH:

Q. Among the letters which you have produced from Mr. Freeman in reply to my request of yesterday is one dated Springfield, March 15, 1877, directed to you. Will you have that annexed to your deposition as an exhibit?

A. The only objection I have to file the letter is that Mr. Freeman might object, but I waive that objection and annex it as Exhibit "Freeman."

Q. In your letter to Mr. Freeman, dated February 20th, 1877, a copy of which was introduced in evidence as an exhibit to the deposition of Mr. Freeman, "I am waiting for the answer to my

881 last two letters, regarding the prices of the reports of the S., T. & W. and as to commissions on your reprints." Have your letter-press copies of those last two letters referred to?

A. I do not think I have; I did not copy all my letters to him.

Q. Have you made search in your letter-press book to see if you have such copies?

A. I have looked through, examined copies of letters written him, but I have no recollection of that one. I can look again.

Q. Will you make a search for those two letters and submit them to my inspection?

A. Yes; certainly.

Signature waived by agreement of counsel.

882 E. B. Myers, law-book publisher and dealer, 93 Washington St. Established A. D. 1860.

CHICAGO, *May* 18, 1877.

Messrs. Callaghan & Co.:

GENTLEMEN: How much will you charge me for the following volumes of your reprint of Illinois Rep'ts: $\frac{3}{20}$ copies, $\frac{1}{21}$, $\frac{1}{26}$, $\frac{3}{27}$, $\frac{3}{28}$, and 29.

Yours, &c., E. B. MYERS.

For the present the price will be, as previously quoted, $6 per vol. for the reprints—same as your reprint of vol. 46.

Yours truly, CALLAGHAN & CO.

The price of my reprint of vol. 46 since May 1 is the same as vols. 39 to 45, inclusive, $5, $\frac{1}{10}$ off.

E. B. MYERS.

We were not previously aware of the change in your vol. 46, but as we see no reason for our altering our price at present we will not do so.

Very truly y'rs, CALLAGHAN & CO.

883 STATE OF ILLINOIS,
SUPREME COURT REPORTER'S OFFICE,
SPRINGFIELD, *Jan.* 12, 1877.

D'R MYERS: Please send me by first express vol. 3 Wood & Long's Digest.

Why don't you write to Soulé, Thomas & Wentworth and state to them your understanding of our tripartite treaty? I am working like a beaver to get ready for an announcement.

Yours truly, N. L. FREEMAN.

884 "EXHIBIT FREEMAN."

STATE OF ILLINOIS,
SUPREME COURT REPORTER'S OFFICE,
SPRINGFIELD, *Feb.* 15, 1877.

D'R MYERS: I send with the books to-day sheets of 70, 71, and 79. Vol. 72 will be complete in two or three days, when I will send you a set. Gross and I got a big batch of subscribers for 19–31 this morning. Now, let us pull together in this matter and beat the d—d Irishman. He has told enough lies about you and me to pave hell over ten feet deep. Remember the cuss is not to have 32 to 46. Keep me advised of everything.

Yours, N. L. F.

885 EXHIBIT.

Copy of Letter.

CALLAGHAN & COMPANY, LAW-BOOK SELLERS,
CHICAGO, *Feb'y 16th*, 1877.

E. B. Myers, Esq., Chicago.

DEAR SIR: We are in receipt by our messenger of your decision upon our offer of $5,000, made to you on Monday last, to the effect that you refuse such offer and prefer to keep the property.

We therefore withdraw the offer, and beg to inform you that we shall not hereafter entertain any proposition of any nature looking to a purchase of those books.

You already are in possession of our intentions with respect to the Illinois Reports, and we write this for the purpose of putting on record the fact that the responsibility for whatever may occur in the future must rest with you, through your refusal to sell.

Very truly yours, CALLAGHAN & CO.

886 *Answer to said Letter.*

E. B. Myers, law-book publisher and dealer. Established 1860.

CHICAGO, *Feb'y* 16, 1877.

Messrs. Callaghan & Co.

GENTS: I am in receipt of your note. Any one would judge from its import that I had committed an error or a great wrong simply in declining to sell my own property for less than its value.

The amount you offered at 8% will be much less than the property earns me, which, to a prudent man, is a sufficient reason for declining to sell.

Resp'y, E. B. MYERS.

887 *Complainant's Testimony Concerning Infringement of Volumes* 39 *and* 41 *to* 46, *Inclusive, Embraced in Supplemental Bill.*

And thereupon complainant, to maintain the issues on his part as to the infringement of volumes 39 and 41 to 46, inclusive, of the Illinois Reports embraced in the supplemental bill of complaint, read in evidence the following depositions:

The deposition of Charles H. Wood as follows:

EUGENE B. MYERS, Complainant,
vs.
BERNARD CALLAGHAN, Defendant. } In Chancery.

Deposition of Charles H. Wood, taken before Henry W. Bishop, master in chancery of said court, June 27th, 1881, in behalf of complainant.

Int. 1. Please state your name, age, residence, and occupation.

A. Charles H. Wood; practicing lawyer.

Q. How long have you been a practicing lawyer in Illinois?

A. Well, I first came here, to Illinois, 24 years ago, and commenced the practice of the law, and have been practicing all the time since except about seven years, when I was circuit judge of this State.

Q. Have you had any special experience, if so, what, in the examination and digestion of Illinois Reports?

A. Well, I commenced buying the reports when I commenced practicing—about the 17th Illinois—and bought them as they came out along, and, of course, used them in daily practice; and then,
888 in connection with Mr. Long, we have digested nearly all the reports.

Q. Have you seen and made any examination of the volumes from 39 to 46, except volume 40, of the Illinois Reports as published by the complainant, and also those published by the defendants; and, if so, when?

A. I have run through them and made an examination of them within the last week at the request of Mr. Myers.

Q. State whether or not there is a similarity between the volumes published by Mr. Myers and the volumes of corresponding numbers as published by Callaghan & Co.

A. There is.

Q. State whether the volumes of Callaghan & Co. are made in imitation of Mr. Myers'.

A. There is a general resemblance in the size of page, mode of arrangement, and the general get-up of the book.

Q. State whether they are so made up and arranged that the books of the defendants could be sold in place of the books of the complainant.

A. They were designed to be used indiscriminately with the volumes reported by Mr. Freeman.

Q. Take the volumes produced here—39 of the books as published by complainant and volume 39 of the books as published by defendants—and point out a few of the striking resemblances.

A. I made a memorandum as I run along of what I observed.

889 Q. And I would like to have you, if you can, state whether there is a similarily in the matter; and, if so, what?

A. In the syllabi of some of the cases the same words were used. In some of them there is a substantial — of the syllabi as they appear in Mr. Freeman's report; notably that is true, so far as I have observed, in volume 39.

Q. The question is limited to volume 39.

A. For instance, take the first case. The syllabus Martin *vs.* Barnhardt is substantially, I think, like the one in Freeman. Then the brief or the abstract of the brief of the plaintiff in error, on page 11, is almost word for word with the same abstract of brief on the same case in Mr. Freeman's report of that volume. A portion of the syllabus is substantially the same in Bowen *vs.* Barttleson, on page 43, particularly the first paragraph. In Phelps *vs.* Funkhauser, page 402, the syllabus in each volume is substantially the same.

Q. Is the syllabus in the case taken from the opinion; have you examined to see?

A. Some of the same words are used, but it is not a quotation from the opinion.

Q. Is the syllabus as published in the books of the defendant more nearly a copy of the opinion of the syllabus in the other book?

A. I think it is or nearly a copy of the syllabus from Mr. Freeman in Stone against Smoot, page 409. The syllabus in the volume by Mr. Bailey very closely follows that of Mr. Freeman; it
890 is not a quotation from the body of the opinion, but it is a summary of what the opinion contains. Those cases give about a fair representation of the volume. These, perhaps, are the most notable indications of one being an imitation of the other, or copied from the other, of any in the book from the examination I have given.

Q. Have you made an examination of the other matter in the book besides the syllabus? If so, state whether or not there is a similarity.

A. There is a general similarity; perhaps the type is a little larger; at least I should say it was a little heavier leaded than the volume of Mr. Bailey. The pageing corresponds. I notice, however, in some of these volumes more matter is included than in Mr. Freeman's volume. The pages are numbered the same until they reach the opinion, so as to make the page upon which the opinion commences correspond in Mr. Bailey's volume with Mr. Freeman's—that is, they are identical in number.

Q. Have you made any examination of the table of cases in these volumes to see whether the tables of cases in the two volumes are similar?

A. Well, a little. The chief difference is that in Mr. Freeman's volume the cases are arranged in the order of the alphabet as determined by the vowels; whereas in the volume by Mr. Bailey they seem to be made up under each letter indiscriminately—that is to say, as an illustration, under "B" Burnhardt *vs.* Martin commences with the first vowel of the alphabet. Now, the fourth case
891 below is Bucter *vs.* Dil. In Mr. Freeman's arrangement that would come near to the end of the last case under "B;" whereas he has it the fourth case, and then after it come cases that should be nearer the head. For instance, Bigelow *vs.* Star should come before it. This, perhaps, gives the idea. It is little difficult to make it.

Q. There is a change in the order in which the cases are put under each separate letter?

A. There is a change in the order. For instance, I notice under "B" Bureau County board supervisors is in parenthesis *vs.* Thompson. In Mr. Freeman's it is simply Bureau County, supervisors of, *vs.* Thompson. I think Mr. Bailey abbreviated a little more than Mr. Freeman in giving the title of cases, but with these exceptions in the order of arrangement they are pretty much the same.

Q. Go on to the case on page 24. State whether in the table of cases of the defendants' books the name of that case is given as in

the table of cases in the Myers book or according to the case itself in their own book.

A. In Mr. Bailey's book it seem to be both at the head of the report of the case itself and in the table of cases. In Raimey *vs.* Boyd in Mr. Freeman's it is reported in the same manner as Raimey *vs.* Boyce.

Q. Look at the table of cases of the book of defendants' under the "B's" and see which it follows.

A. It is there given as Boyce *vs.* Rainey, the same as Mr. Freeman's on Boyce *vs.* Rainey.

892 Q. Have you made an examination of the volumes of the briefs of counsel as given in the new books?

A. A little. I have noticed that in the volume by Mr. Freeman there are scarcely any briefs given; occasionally there is one.

Q. State whether you find these copied into the other book or not?

A. On one or two cases they have been substantially copied, but there are several statements that are not in Mr. Freeman's at all.

Q. Briefs of counsel in the defendants' book that are not in the complainant's book?

A. Yes, sir. I wish to qualify that answer, however, by saying that I make it with reference to all these reports, not only the 39th, but in the succeeding volumes, 41, 44, 45, and 46, and perhaps I noticed it more particularly in the latter volumes than in this volume 39.

Q. That is, there are some briefs given in these volumes that are not in complainant's books?

A. Yes, sir.

Q. And you mean also that the briefs in the complainant's books are, many of them, copied substantially also from the defendants' books?

A. Well, in two or three cases I have found so, but I have not looked particularly with reference to that.

Q. Look at page 10 and state whether or not the pleadings, as given in the volume of the complainant, are copied, and, if so, to what extent, by the defendants.

A. Well, do you mean the pleadings?

893 Q. No; I mean the errors assigned.

A. The errors assigned are substantially the same.

Q. Now, the statement of the case.

A. Well, the statement of the case in substance embraces the same proposition, but it is not so closely copied as the briefs of counsel. The brief of the plaintiff in error is substantially copied.

Q. Turn to page 13, the case of Lynch *vs.* Rotan, and state whether the statement of the case in the brief of counsel is copied there; and, if so, to what extent?

A. The statement of the case is fuller in the volume reported by Mr. Bailey than in the one reported by Mr. Freeman, but the briefs of the counsel seem to follow each other very closely.

Q. Look at 41. You stated in volume 39 of the defendants the

paging of the new matter that was inserted was repeated so as to have the opinion commence on the same page in the two books.

A. The page is here repeated. There is a skip in the paging so as to make the opinion in each of the reports commence on the same page; for instance, in Mr. Bailey's edition the statement of the case commences on page 357. The very next page on which the opinion commences is 367, a skip of 8 pages.

Q. State whether in volumes 41 and other of the volumes in question *if* you have examined whether the paging as given by Mr. Myers in other matter than the opinion is copied into the
894 book of the defendants. I will call your attention in this regard to pages 80, 88, and 92.

A. Page 80 in each volume corresponds; page 86 corresponds in each volume.

Q. On page 86 in the books of the defendants is there a star paging there?

A. There is.

Q. Is that in the opinion or on other matter?

A. It precedes the statement of the case.

Q. Look at page 88. What is the star paging there?

A. In the volume of defendants the star pages 87 and 88 occur very near together, and on page 87, and not in the opinion.

Q. The star paging is not in the opinion?

A. No, sir.

Q. What do you understand that star paging to refer to?

A. The star pages refer to the top paging of Mr. Freeman's reports of the same volumes.

Q. Could those pages be copied as you find them in the books of defendant-, except by a person having before them the book of the complainant?

A. I don't think it could so uniformly be done; possibly in one case they might hit it, but it is very obvious that the star paging in the defendants' volumes were taken from the top paging of Mr. Freeman's volumes.

Q. Look at page 116 in the two books and state whether or not there is a similarity there in the copying of the title of the case of Cook *vs.* Yarwood.

A. That is in the opinion of the court.

895 Q. I will ask you if there is a similarity, and, if so, what, in the appearance of the two—the style of type and arrangement.

A. They are substantially alike.

Q. Are they not exactly alike?

A. Well, they look alike.

Q. Can you see any difference in them at all?

A. No; I can't point out any difference.

Q. Look at page 197 of defendants' books and state whether there is a copy of the note there.

A. It is partially copied.

Q. Look at the statement of the case on page 272 and state

whether or not the defendants' book is a substantial copy of the complainant'-.

A. Well, some of the words are copied, and include substantially the same idea.

Q. State whether or not, "Mr. Wood," the general appearance of the volumes published by the defendants corresponds with the appearance of the books of the complainant.

A. O, they are made in the general style of the volumes reported by Mr. Freeman.

Q. Is there any difference in the character of the type, in the title on the back of the book?

A. They correspond very closely, except the name of the reporter below the number of the volume.

Q. Mr. Wood, I will ask you to take the two volumes, 41 complainant's and defendants', and point out a few illustrations where the matter is copied from one into the other.

896 A. I think in the volumes 41 down to 46 that usually the syllabus of each case has been rewritten, but in some of the cases, or at least in some parts of many cases, the syllabi so closely followed the volumes of Mr. Freeman that they might have been copied. For instance, take Tundt or Hartranft, No. 10 of the defendants' and No. 7 of the complainant's, the subdivision of the syllabus of that case very closely resembles each other. So in Camel *vs.* McCahan, subdivision 7 of the defendants' and 4 of the complainants' very closely resemble each other. So in Leach *vs.* Pine, page 65, the same idea is expressed in a little different language. The Illinois Central Railroad Company *vs.* Wafers, page 73, the syllabus in each volume expresses the idea which was in defendants' volume; it was evidently rewritten, and that case is a fair sample of a great many—you might say of a large proportion—of the succeeding columns. The syllabi express the same ideas, but they are clothed in different language and evidently rewritten. Of course, I can't say whether they were rewritten from Mr. Freeman or rewritten from the records.

Q. You say you can't tell from an examination of the syllabi of the two books whether they were written in the defendants' books from those of the complainant?

A. Yes, sir.

Q. From your examination, can you state whether the syllabi, as they appear in the defendant's book, could not have all been written from the syllabi in the book of the complainant?

897 A. Well, I think they might in connection of the opinion. If you will allow me to explain, I have had considerable experience in writing syllabi and in making digests. We aim to condense in our systems of digest Mr. Freeman's syllabi as much as possible, and in order to do that we rewrite his syllabi, and we look closely to the opinion, as the opinion is the source from which the syllabi is taken, and so I have no doubt that the syllabi in the defendants' books could have been written from the printed volumes of Mr. Freeman, but perhaps not from his syllabi alone, but that taken in connection with the opinion of the court.

Q. Isn't it true that in the syllabi of the books of the defendant- many of the changes made appear from an examination to have been made only for the purpose of making a difference between the books of the complainant and the books of the defendant-?

Objected to as asking for a legal opinion.

A. All I can say as to that is that in many cases there is a mere change of words which have a synonymous meaning, but not any change of the ideas expressed.

Q. Isn't it true that in the volumes in question many of the syllabi are substantial- alike?

A. In a general way, it is.

Q. In volume 44 of the two books state whether there is substantially the same correspondence between the books of the
898 complainant and the books of the defendant- as those specified in regard to volumes 39 and 41?

A. There is.

Q. Give a few illustrations.

A. All the similarities between the two books in the case, L. F. Dealy *vs.* Thompson, in the syllabus in each volume are substantially alike; part of the syllabi in the case of Camp *vs.* Small, on page 37, are substantially the same. In Baker *vs.* Young, on page 42, a large proportion of the syllabus in each of those cases are substantially alike. On page 113 in these cases the catch words to the syllabi are the same, and the body of the head-note is substantially alike. On page 208 the larger proportion of the head-notes corresponds very closely. I believe that is all the samples that I will give.

Q. Look at page 49 of the same volume, 44, and state whether there is any copy in the book of the citations in complainant's book.

Objected to as incompetent.

A. There is; abbreviated from the complainant's report of that case, in this, that it leaves out the names of the parties.

Q. Look at page 50 of defendants' book and state whether or not the quotations of authorities, as given in complainant's book, are copied; and, if so, to what extent.

Objected to as incompetent.

A. Well, the volumes of the reports and the text books are cited, with the exception of Story on Sales, section 352. It is entirely omitted.

899 Q. Look at pages 116, 117, and 118 and state how much, if any, of the matter contained in complainant's book is copied into the book of the defendant-.

Objected to as incompetent.

A. The statement of the case is evidently rewritten; some of the same words are used in each. Whether it was rewritten in the defendants' book from the complainant's book I am unable to say. The copy of the instructions given in each are substantially the same.

Q. What, in your opinion, would be the effect of the publication of the defendants' book on the sale of the books of the complainant?

A. A lawyer or other person who had the defendants' book would not want the complainant's; one would answer as well as the other, I suppose, in practice and in the courts.

Q. State what the effect, if any, would be of a change of the name of the reporter on the back of the book in preventing the sale of the defendant's books for and in place of the books of the complainant?

A. I don't know as it would make any difference if a party wanted to, but these volumes, I suppose, the question would be simply whether he wanted an annotated edition or not, or whether he could get one any cheaper than the other. I don't think the name of the reporter would make any special difference.

Q. Would a person asking for Illinois Reports be likely, from the appearance of the books, to observe that there was a difference
900 between the two books by reason of the difference of the name on the back of the books?

A. I don't think that would make any difference. A man buying law books, like everything else, he generally, before he purchases, knows what he is going to buy, and, as I said before, I don't think the reporter would make any difference. The question to the purchaser would be the difference in price, and as to whether he wanted an edition annotated or whether he did not.

Q. Would a purchaser be guided by the name Illinois Reports or by the name of the reporter in making the purchase?

A. No; I don't think that would make any difference. Some would prefer probably the defendants' books, because they are annotated to some extent.

Q. How are these books known in the market here—by the name of the reporter or by the title, Illinois Reports, volumes numbered so and so?

A. They are almost universally reported, after the volume by Gilman, as Illinois Reports.

Q. That is the title under which they are used and sold, is it not?

A. Yes; that is the title under which they are sold, so far as I know, and I know it is the title under which they are cited in the courts.

Q. The name by which they are generally known?

A. Yes, sir.

Cross-examination by Mr. HIGH:

Q. How much time did you spend in the examination of these volumes?

A. Oh, not more than a couple of hours.

900½ Q. When you say there is a general similarity between the complainant's and defendants' volumes, do you mean that there is any more similarity in typography, size of page, and general make up than exists in law reports generally of the different States?

A. Well, the reports of the States are a little dissimilar, in this, that a person accustomed to see them often can tell at a glance from the general similarity. They all look alike in any one State, but

they are different from any other State, although they are all bound in law sheep. All I can say in regard to the external appearance of these books is that they are substantially alike in the general make up, in the general appearance, the general style of the reports published by the complainant and the defendants at a short distance. For instance, you couldn't tell whether that was published by one or the other; take the case of the one published by Mr. Freeman and one by the defendants.

Q. At the same distance you couldn't tell, I suppose, whether they were Illinois or Michigan or Iowa Reports, could you?

A. Unless I was particularly familiar, perhaps I would not be able to do so; almost all law reports are bound in law sheep.

Q. And they all look about alike as they stand on the shelf in a book store, do they not?

A. Well, there is some little difference; some of them are bound a good deal better than others, and a little difference in the color.

901 Q. But the general appearance is substantially the same, is it not?

A. Well, they are about the same size. All the reports are the same size, although they are all bound in law sheep, and of course they will have a resemblance.

Q. A general resemblance?

A. A general resemblance; yes, sir.

Q. They all use small pica, do they not, generally, in the body?

A. I think all the matter of the reports——

Q. Are substantially alike.

A. Yes, sir; leaded some more than others, though.

Q. So that in opening a page of this report or any other State reports, without knowing from the title or otherwise what reports they were, you would not be able to state from the mechanical appearance of the page ordinarily, would you?

A. Well, unless attention was particularly directed to it—there was something on the page to disclose, such as notes or something of that kind.

Q. You have spoken of some similarity between the head-notes of the two editions, so far as you have compared them; do you find any other similarity that might arise from the fact that both reporters had followed, in substance, the language of the opinion?

A. I have not examined these reports sufficiently extensively to be able to state how far either reporter has followed the exact language or the substantial language of the court. I have merely examined in a few cases.

902 Q. Do you find in those cases substantially the same language used in the opinion or the same ideas expressed that is expressed in the head-notes of the defendants' book?

A. Yes, sir; generally the head-note would not be correct unless he did give the idea—the point decided by the court.

Q. So that if two reporters were substantially a correct or accurate report of the propositions decided by the court there would necessarily be a great resemblance in the head-notes, would there not?

A. There would in the ideas expressed. Mr. Freeman is very voluminous in his head-notes—more so, according to my experience, than the majority of reporters in this country.

Q. You have testified that the head-notes on page 43 of the defendants' volume 39 are substantially identical with the head-notes corresponding in complainant's volume. Look at those head-notes and state if you do not find that the head-notes in defendants' volume follow substantially the opinion of the court.

A. In giving the facts it does.

Q. Look now at the second of the syllabi and state if you do not find the language almost literal- in the opinion of the court.

A. Yes, sir; I do.

Q. And the third head-note?

A. Yes, sir; substantially.

Q. You have testified that the head-notes on page 402 of defendants' volume 39 are substantially like the corresponding head-notes in the complainant's volume; look at the opinion in that case
903 and see if you do not find that the head-notes in defendants' volume follow substantially the language of the opinion.

A. The first, third, fourth, and fifth points substantially are embraced in the opinion and follow very substantially the language of the opinion.

Q. Now, look at the second and look at the language on page 405 and see if you find any similarity.

A. Yes, sir; the second point is substantially there. There is a difference in the phraseology; that is all.

Q. You have stated that — page 10 of the defendants' volume 39 you find the errors assigned substantially the same as in complainant's volume. Look again at complainant's volume and state whether any errors assigned appear.

A. In the defendants' volume what appears as errors assigned in the complainant's volume appear under the head of briefs of the plaintiffs in error, and there is no distinctive designation of it as errors assigned.

Q. Do not the same points appear in the brief for plaintiff in error in defendants' volume?

A. Yes, sir; they do.

Q. Would it be your judgment that the defendants' reporter had taken those errors assigned from the brief in complainant's volume or from some other independent source?

A. It would be comparatively easy to ascertain and write out in substance the assignments in error from the opinion of the court in the case.

904 Q. Wouldn't that be a more probable course for defendants' reporter to pursue than to attempt to state the assignments of error of the briefs as reported in complainant's book?

A. I think it would depend wholly upon the facilities at hand.

Q. With the opinion before him, I mean?

A. It could have been done from either source, but I can't say that the one would be more improbable than the other. If the part- that reported the defendants' volume 39 had the whole record right

before him he could have copied it from that; if he had not he could have taken it from the other and written it. The question of probability is something when you come to determine it—a question of fact.

Q. But it's true, is it not, that Mr. Freeman has no assignment of error in that case?

A. He has not copied any; has neither the errors assigned separately.

Q. And defendants' reporter has?

A. Yes, sir.

Q. You have stated that the briefs are substantially the same in the two editions in this case. The last sentence in the brief in defendants' volume on page 12 reads as follows: "The authorities referred to by plaintiff in error in support of the position that where a verdict and judgment are too general the judgment will be reversed are not applicable to this case, but wholly irrelevant." Will you point out that sentence in the brief in complainant's volume?

905 A. That is not contained in the brief of defendants in error in the complainant's volume.

Q. Where did he get it?

A. I am unable to say.

Q. You are satisfied he did not get it from complainant's book, are you not?

A. I don't see anything in the report of the case, as I did not in complainant's volume, from which it could be taken.

Q. You have stated that on page 17 of the defendants' volume 39 the briefs of counsel seem to follow each other very closely as compared with complainant's volume. The last sentence of the brief of B. B. Smith in defendants' volume *is*, as reported on page 88, reads as follows: "The decree is excessive; the amount due complainants, if entitled, is $511.61." Will you point out that language or anything like it in complainant's volume.

A. That is a matter that is not contained at the end of Mr. B. B. Smith's brief in the complainant's volume in the report of the same case.

Q. Is it included in that brief in the complainant's volume?

A. I don't see that it is.

Q. Where did it come from?

A. That is more than I can tell.

Q. In volume 41 you have stated that at page 10 of defendants' volume head-note number 10 resembles closely head-note number 7 in the corresponding case in complainant's volume. State if you do not find that language substantially in the opinion.

906 A. Well, it embraces the same idea, but it is taken from the opinion and stated in slightly different language.

Q. But presenting the exact idea given in the opinion?

A. Yes, sir; it expresses the point of the instruction.

Q. You have stated that at page 46 of the same volume number 7 of defendants' head-notes corresponds closely with number 4 of

complainant's. Do you not find substantially that language in the opinion?

A. Well, the syllabus embraces the point of the court, but it is abridged.

Q. But giving the exact idea in substantially the same language somewhat abridged?

A. Well, it gives the point decided by the court, but uses a little different language to convey it and also abridges it.

Q. Is it changed any more than it would ordinarily be changed by a reporter in attempting to give the substance in the point decided by the court?

A. No, sir; it is a correct head-note, because it gives the point decided in concise language.

Q. A little more concise even than the court did?

A. Yes, sir.

Q. Is that not true of many of these head-notes in defendants' volumes that you have examined?

A. It is.

907 Q. That they give the idea of the court in briefer and more concise language?

A. Yes, sir.

Q. You have stated that the head-notes on page 73 of defendants' volume 41 express the same ideas as in the corresponding case in complainant's volume. Do you not find there that defendants' head-notes follow substantially the opinion of the court?

A. That is a head-note that might have been written from the opinion without any regard to any other head-note.

Q. You have stated that in volume 44 of defendants, at page 9, the first syllabus is substantially like that in complainant's volume. Do you not find the exact language of the syllabus in the opinion at page 11?

A. I do.

Q. Literally?

A. No; not literally, but substantially.

Q. Almost literal, is it not?

A. Well, it conveys the idea, but not in the same words exactly.

Q. The words were almost the same, were they not?

A. A large proportion of the words are the same.

Q. In volume 44 you have stated that, at page 37, part of the head-notes of defendants' volume are substantially the same as in complainant's. Look at the opinion and state if you do not find substantially the same language used in the opinion.

908 A. Both syllabi make the point decided by the case, and either one of them might have been written from the opinion of the court.

Q. In the same volume, at page 47, you have stated that the syllabi are substantially the same. Do you not find that in defendants' volume the syllabi resemble the opinion almost literally?

A. Yes; it is substantially taken from the opinion.

Q. And in many cases they follow the opinion literally, do they not?

A. Yes, sir; well, I should say substantially—that is, they follow the bulk of the words of the opinion.

Q. At page 113 of volume 44 you have stated that the catch word in the defendants' head-note is the same as in complainant's. Do you mean by the catch word the latin quotation?

A. Yes, sir.

Q. Do you not find that literally in the opinion?

A. Yes, sir.

Q. In volume 44 you have stated that, at page 208, the head-notes correspond in the two editions. Do you not find the language used in the defendants' head-notes substantially like that in the opinion?

A. Well, the ideas in the syllabus, of course, and some of the language. I can't say that the syllabi in both cases might have been written from the opinion.

Q. And isn't that true generally of all these head-notes that you have examined?

909 A. I don't know whether it is or not. The defendants' volumes of reports by Mr. Freeman do not scarcely give statements of facts or briefs of counsel, but then from the mode of decided cases in practice by the court at that time, perhaps now, the court generally states succinctly the facts, so that in most all of these cases it is possible to write from the opinion itself a syllabus. In digesting I throw aside Mr. Freeman's syllabus and write one to satisfy myself from the opinion itself for the sake of getting it more condensed.

Q. And you think that may have been done in defendants' volumes?

A. I think in 41 and 44 that that was done, or it might have been done a good deal. They appear to have been rewritten, but from what source I am unable to state.

Q. Do you not find a very large amount of matter not head-notes, statements of cases, briefs of counsel, and foot-notes in defendants' volume that you cannot find in complainant's?

A. All of the foot-notes pretty much that are contained in defendants' volumes are not in complainant's. In defendants' volumes also are a large number of the statements of points of counsel that are not in complainant's volumes at all. In the aggregate I don't think there is any more matter in the head-notes of defendants' volumes than there is in the head-notes of complainant's. They both contain quite voluminous and extended head-notes.

910 Q. As to these matters which you state you find in defendants' volumes that are not in complainant's, where do they come from?

A. Not knowing, I can't state.

Q. If you are testifying as an expert what is your opinion as to the source from which they came?

Objected to.

A. It would be mere guess-work. I never made any inquiry as to the source whence they acquired their information, and therefore I am not in the position to have any definite opinion about it.

Q. At paves 116, 117, and 118 of defendants' volume 44, you have stated that the instructions as given in each volume are substantially the same. If defendants' reporter or editor had the record of the case before him from the supreme court and took his instructions from that, would they not necessarily be the same?

A. I suppose, of course, it must be that the instructions were copied into the record, else they could not have been brought to the attention of the court.

Q. Do you see any reason in that case or in any other of these cases concerning which you have testified, upon the face of the report, why defendants' reporter may not have taken the material from the records of the supreme court?

A. I suppose the material for making both of these reports are in the office of the supreme court, in the different grand divisions.

Q. And you see no evidence to show that defendant-' reporter may not have taken them from there?

A. Only in the specified cases that I have given, where a
911 close resemblance shows that he might have perhaps taken it from the printed volumes of Freeman.

Q. In these cases may not the close resemblance, as you term it, be due to the fact that defendants' reporter followed closely the original record?

A. Well, it seems rather singular, for instance, in this case in 39, on page 11, that they should have got the abridged brief in the exact words, if the reporter of defendants' volume 39 had not it before him when he was making out his report of that volume, unless he had a better memory than most of us.

Q. But in the very case you have stated that you find a sentence at the end of the brief as reported in defendants' volume which is not in the brief as reported in complainant's volume?

A. But that could have been added, even if he had used Mr. Freeman's report of the case, very easily.

Q. How added, if not from the original record?

A. Well, if it was a genuine report of what the brief really was, of course it could not have been taken from any other source than the briefs in the case.

Q. In the table of cases in volume 39 do you not find a method in the arrangement of the cases alphabetically under different letters entirely different from the arrangement in complainant's volume?

A. I do in that case. They are headed in without regard to any arrangement of letters in defendants' volume, whereas they
912 are in complainant's volume.

Q. Do you find any other difference?

A. Occasionally there is a slight difference in the giving of the names of the parties.

Q. Look at the pages cited in the table of cases in defendants' volume 39 and state if you do not find a method in the arrangement of those cases in the table entirely different from the complainant's.

A. Yes, sir; the table seems to be made up rather in the numerical order in which the cases are reported in the body of the volume.

Q. So that Freeman follow- the alphabetical arrangement under the different letters and defendants' volume follows the number of the pages?

A. It appears to be so.

Q. An entirely distinct matter in each case?

A. So far as that goes, it is.

Q. What effect would the name of the reporter, such as Bailey, Denslow, Ewell, in the title on the back of defendants' volumes, and also their names on the title pages of defendants' volumes, have upon an ordinary purchaser as to indicating whether he was purchasing from defendants' volumes or complainant's?

A. Well, of course he would know, if he could read, that this was a special edition and not the regular edition, because every lawyer in the State, I take it, knows who the official reporter is.

Q. So any casual or ordinary purchaser would know whether he was purchasing the Freeman or the Callaghan edition?

A. Yes, sir; unless he were blind.

913 Redirect examination by Mr. LE MOYNE:

Q. In the reports what does the name in the lower part on the back usually indicate?

A. Simply the name of the reporter, or it might be of the compiler.

Q. Does it indicate the compiler or reporter usually; have you ever known a case where it did not indicate the name of the reporter?

A. Ordinarily it does indicate the name of the reporter, because all the reports are published under the patronage of the State.

Q. There is nothing on the back of these books, is there, to indicate that he was not the official reporter?

A. Well, there is no difference, because in the case of the Illinos Reports the letters on the back, both as to the color of the label and the arrangement of the lettering, are precisely the same of the complainant's and the defendants', and the only difference is in the letters in the name.

Q. Then, to a person who did not know the name of the official reporter, there is nothing to indicate there that these are not the regular official reports, is there?

A. There is not on the back.

Q. From the comparison you have made of the books of the complainant and the defendant-, and from the similarity which you have mentioned as existing between the statements of the different cases, the arguments of counsel, and the syllabi, is it possible
914 for any one, in your opinion, to have made the books of the defendant- without having used the books of the complainant?

A. No one certainly could have made the star paging to correspond with Freeman unless they had the original volume by them at the time they prepard the copy.

Q. In the other points — similarity which I have mentioned could they have been made to so closely correspond as they do without the

books of the complainant being used in making the books of the defendant-?

A. There isn't any doubt but that the series of the defendant- was published to correspond as closely as possible with the series of the complainants, in my mind. It is mere guess-work.

Q. The question is whether they could have been made to correspond without having the complainant's books before them?

A. I don't think that I could have done it, and I don't think that anybody else could.

Q. In making the comparison of the syllabi in the two volumes have you found, and, if so, in how many places, in many or few cases, a similarity in the verbiage in the two books not found in the opinion itself?

A. In most of the cases that I have given of similarity the language of the syllabi of both reporters follows very closely the language of the court. I have not in my mind now, and perhaps have not made a sufficient examination to decide, any particular cases
where the language corresponds of the two reporters, and both
915 of them are different from the opinion of the court. The natural drift of the reporter is to embody the idea of the court as concisely as possible and yet convey the idea of the court, and these parties reporting both of these sets of volumes, from the examination I have given to them, seem to have followed out that idea—that is, giving the point of the case in the language of the court as nearly as they can; and hence to say that there are syllabi there that don't include part of the language of the court is what I am unable to say. Most all of them include some of the language of the court and some of their own, and one in some cases will include the language of the court and the other not, but use exactly synonymous words, the point attained by both of them being to get the point decided and to state it obviously a little different.

Adjourned till 11 o'clock a. m., June 28, 1881.

And thereupon complainant read in evidence the deposition of F. W. S. Brawley as follows:

916 Testimony of F. W. S. Brawley taken before Henry W. Bishop, master in chancery of said court, the 28th day of June, A. D. 1881, on behalf of complainant.

Q. What is your name, age, residence, and occupation?

A. F. W. S. Brawley; residence, Chicago; occupation, lawyer.

Q. How long have you practiced law in Illinois?

A. Thirty years and more.

Q. Have you made any examinations of the volumes of the Illinois Reports, from Nos. 39 to 46, published by the defendants, Callaghan & Company, and compared them with the volumes of the same numbers published by the complainant and reported by Mr. Freeman?

A. I have examined 42 and volume 43.

Q. State, from the examination you have made, whether the volumes published by the defendants, Callaghan and Company, are similar to those published by the complainant and whether or not they are copied from those of the complainant; and, if so, to what extent.

Counsel for the defendant objects to so much of the question as relates to whether defendants' volumes are copied from the complainant's as being incompetent.

A. I find considerable similarity between the volumes I have examined in different respects. In the table of cases, in the 42nd and 43rd, the cases are the same contained in the reports, and each
917 case ends and the next case begins on the same page in each volume.

Q. You mean in the volume of the complainant and the volume of the defendants.

A. Yes; in the 42nd published by Myers and the 42nd published by Callaghan; sometimes there will be a slight difference; not always, but almost every case; the case is reported as beginning on the same page in the two books all the way through. The paging in the Callahan edition seems to be arranged so as to correspond with the paging in the Myers; for instance, the cases begin on page nine in Myers and they begin on page 9 in Callahan, and then nine is repeated; and the next case begins on page 18 in both, and then page 20 is repeated six times in Callahan edition, so that it brings them both out at page 34. The next case begins on 35 and 35 is repeated three times in Callahan, so that the following case begins on the same page, 39. Then the next begins on page 41 and ends on page 45. The next one begins on the same page and then 45 is repeated in the Callahan edition so as, apparently, — let them terminate and begin the next case on the same pages. Page 53 is repeated in the Callahan edition, and when we get to page 59 we jump to page 64; from 59 to 64 is omitted. On page 71 Mr. Justice Lawrence delivered the opinion of the court, and they are both identical; and then from 74 we jump to 76, so that the case in each volume end-
on page 78 and the next case begins, in the Callahan edition
918 it ought to be 79, but in Myers' edition the next case begins on 78—that is, 78 is repeated in the Callaghan edition—and then it jumps to 80, then it jumps from 87 to 89, and then 89 is repeated three times, and then 96 to 98, and then 100 is repeated; 108 is repeated three times; on 114 there is a note at the bottom of the page repeated or copied; 120 is repeated twice; then 144; then 123 jumps to 129; 144 is repeated three times, and then it jumps *to* 149 to 151; 154 is repeated three times. I notice a similarity in the syllabus, on page 159, the same number of paragraphs. From 192 it jumps to 198, and 192 is repeated, a note on 19; top paging of the Callaghan edition, being a note in same case, Scammon *vs.* The City of Chicago, in Myers' edition, page 193. Beginning on page 198 is the case of De Wolf *vs.* Pratt, decided in '66. At the April term 1867, — was a petition for rehearing filed, and there is a similar note of

the decision of the case on rehearing disposed of on page 212. The case was decided in '67 and a rehearing inserted on page 212.

Q. You mean that it appears in both volumes?

A. Yes, it appears in both volumes in a similar note; a petition was filed at the April term of 1867, and it came in on the same page under a similar note as to the rehearing.

Q. You mean there is a similar note in the Callaghan Company book as there is in the Myers book?

919 A. Yes, introducing the opinion; the rehearing was decided in 1867, and there is a similar sort of note—almost identical note.

Q. It appears that the case was decided in 1866?

A. Yes, sir; on page 230 there is a case that was decided in 1866. In the statement of counsel there is a curious coincidence in the statement of an authority by Mr. Cyase. Among other authorities he cites Nicholas against McEwen, in the 17th New York, 22; the same statement from Chase in both or similar; the same authorities—that is, among others, they both cite the same authority in both books. Myers says "among numerous authorities," he cites Nicholas *vs.* McEwin, and the other states "among other authorities," he cites Nicholas *vs.* McEwin. That is a little peculiar, that he cites that case out of numerous cases. In that volume Mr. Freeman gives an errata. On page 30, at the seventh line from the bottom, there is an error which is repeated at the same place in the Callaghan edition, "negotiable papers should be negotiable paper." In the seventh line from the bottom of page 30, in the Callaghan edition, it says, "this should be negotiable paper," and it shows that the opinion was copied, and the same error was repeated in the Callaghan edition; and on page 213, in the eleventh line from the bottom, there is another error; it says "or" should be "for;" "or if the question had been" should be "for if the question had been." It is an error in Free-

920 man and has been repeated in Callaghan. Then page 479 is repeated, and then jumps from 476 to 485. In the Callaghan book 490 is repeated, and 491 is repeated three times, and 495 is repeated three times—that is, the top page is repeated.

Mr. HIGH:

Q. Let me ask you so as to understand you. For example, you find three pages 495 in Callaghan?

A. Yes, sir. Evidently it is to bring the same cases out in the same pages, so that the case should begin on the same page substantially. Sometimes there is quite a difference in the statement of the case. Freeman will have a line and the other five lines, and the difference in the pages is to bring the cases out on the same page. Now, in volume 43, on page 3, there is a similar notice of the appointment of Mr. Ingersoll. On page 4 Mr. Freeman reports the practice act passed in 1869; and the Callaghan book, published in 1878, publishes the same practice act with the same heading which then appeared in the general statutes. In those two volumes the two tables of cases are almost identical right through. In the Myers edition, — the case Cleghorn *vs.* Postlewaite, the table of cases has Pos-

tlewaite spelled Postlewaite, just as it is in the report of the case in the volume, and in the Callaghan edition in the body of the book Postelwaite is spelled Postelwaite, but at the table of cases it is spelled the same as in the Myers table of cases. In the case
921 of Goodridge *vs.* John Van Nortwick, in that case reported on page 445 in the Freeman book, there is a mistake in the table of cases. It — called there Nortwich instead of Nortwick, and that is repeated in the table of cases in the Callaghan book.

Q. It is wrong in both table of cases?

A. It was wrong in both table of cases, and in the case of Walters *vs.* Wetherell, at page 388, it is Walters *vs.* Wetherell, and at page 388 of the Callaghan edition. In the Myers edition it is Walters *vs.* Witherell and in the table of cases it is Witherell, just the same in both books. It is spelled Witherell in the table of cases in both, and in the report in the Callaghan edition it is Wetherell.

Q. I understand that the table of cases in the Callaghan book corresponds to the Myers book in the table of cases, but does not correspond with the title of the cases where the cases begin in that book?

A. No; now page 97 the case of Hume *vs.* Gossette it is Gossett in the table of cases, and in Myers they make a mistake and call it Gossitt, and that is repeated in Callaghan, the same error in the body of both books. Now, Willetts *vs.* Paine, page 432, it is Willets in the Callaghan edition, but in the table of cases it is spelt as it is in the Myers edition—Willetts. In the Freeman edition Freeman publishes an extra opinion, which was published in 1869. He published the case of the Chamber of Commerce *vs.* Sollitt, which was decided in 1866, and Callaghan does the same on page 519
922 or '20. It looks as if the case as published by Freeman was omitted at the time it should have been put in, and he puts it in in 1869, and it does not come in the place that it should come; and he states that it — so; that it was omitted; and Callaghan gives the same case. It begins at page 519 in each one and each one gives the omitted case. In the opinion of the court on page 35, in Myers' edition, the case of Lawrence *vs.* Smidt is referred to in the 35th of Illinois, page 440. It is repeated in the Callaghan as Smidt just as it is in the Myers book. It is evidently a mistake in the Freeman book, and it — repeated on the same page in the Callaghan book as Smidt; and I turned to the 35th Illinois and found that it is spelled there Schmidt. That is as far as I had time to compare.

Q. From your examination can you state whether or not — Callaghan & Company book shows that it was copied from the Myers book?

Objected to as incompetent.

A. I don't know whether I can state that. I can state that there seems to be a remarkable similarity between the books, prepared, as I presume they were, where the courts were held, by different men at different times—that is, prepared from the records of the courts by different men at different times.

Q. You mean that there is a remarkable similarity between the two books if they were so made?

A. Yes, sir.

Q. It would not be remarkable, however, if one was copied from the other?

923 A. Well, it is a noticeable similarity.

Q. State whether, from your examination and experience as a lawyer, *whether* one book appears to have been intended to take the place of the other.

A. I don't know that I could answer that.

Q. Don't you know that the books of the defendant- have been sold in the market instead of the books of the complainant, and extensively advertised?

A. I have known these books—I have known the Callaghan books—to have been purchased, but how extensively I don't know.

Q. You mean you have known them to be purchased instead of the reports as published by the complainant?

A. Yes, sir.

Q. But you don't know how extensively they have been purchased?

A. No, sir.

Cross-examination by Mr. HIGH:

Q. In the cases in which the Callaghan books were purchased, as you state, could not the purchaser have bought Myers' volume if he had preferred?

A. I would presume so.

Q. Wasn't it simply a question of choice on the part of the purchaser between the two editions as to which he preferred?

A. I don't know what to say in answer to that.

Q. Does not the name of the reporter of editor of the book on each volume of defendants' edition, as well as the difference

924 in the title page, indicate so clearly the different editions that a purchaser of ordinary intelligence would not be liable to mistake the one for the other?

A. I think a new lawyer in Illinois might be mistaken.

Q. Is that all your answer?

A. It might be so. A new lawyer in Illinois, I think, would be liable to be mistaken. It is a mere matter of opinion.

Q. Have you observed any points of difference between volumes 42 and 43 of the respective editions; if so, what—I mean as to the body of the volumes?

A. Occasionally I notice a difference in the length of the statements of the cases.

Q. Did you make any examination in reference to the points of difference?

A. I did not to any extent.

Q. How much time did you spend in your examination of these two volumes?

A. I should think not over an hour.

Q. Did you yourself discover during that examination these various points of apparent similarity to which you have testified, or was your attention called to them by some other person?

A. I think, with a single exception or two, I turned to them myself. I found them myself and marked them. I had a book that was marked; that had some places marked, but I didn't notice them. These places that I have marked here, I believe, I noticed them
925 myself, perhaps, with a single exception, all through. I think, with one or two exceptions, I turned to them myself. On a cursory examination this paging struck me first.

Signature waived.

And thereupon complainant read in evidence the deposition of George W. Cothran, as follows:

926 Testimony of George W. Cothran, taken before Henry W. Bishop, master in chancery of said court, the 28th day of June, A. D. 1881, on behalf of the complainant.

Q. What is your name, age, residence, and profession?

A. George W. Cothran; I am forty-seven; residence, in Chicago; practising law.

Q. Have you had any special experience in the use of the Illinois Reports since you practiced law in Chicago?

A. I have used them considerable the last two years.

Q. You have published an annotated copy of the statutes of Illinois?

A. Yes, sir.

Q. And have used the reports in preparing that book considerably?

A. Yes, sir.

Q. Have you made any examination of the volumes 39 to 46, except 40, published by the complainant and the copies of the same volumes published by the defendants or any of them; and, if so, which of them?

A. I have examined, I might say, most all of them; possibly all of them, or the greater part of them.

Q. Can you state from that examination whether in the arrangement and appearance of the books there is a similarity; and, if so, how great?

A. Well, from the external appearance of the books there is striking similarity in size, shape, and style of binding; the labels,
927 the lettering, and what would be called the book-binder's work. The similarity is so striking that the difference between them would not be apparent to an ordinary observer.

Q. State how they correspond in the interior arrangement and make-up of the book and divisions.

A. In the list of judges the difference is very small. In the Callahan book they use the words, "Judges of the supreme court of the State of Illinois," and in the Myers edition it is, "Justices of the supreme court," and the associates are named "judges" in the

Callahan edition and "justices" in the Myers edition. Other than that the words are the same. In the table of cases the appearance of the page is very similar. The titles of cases are a little differently arranged; they are not alphabetical in the Callahan edition, as they are in the Myers edition.

Q. Which volume are you now speaking of?

A. I am looking at 45 and 46. The cases are in the numerical order in the Callahan book and follow a vocalization in the other. The typographical appearance of the volumes are quite similar. There is a little difference in the volumes at the top of the page. In the Callahan edition they have the place of holding the term on the left-hand page and the date of the term on the right-hand page; in the Myers edition it is thrown in between the two pages, the term, and a little different arrangement as to the opinion and statement of the case, at the bottom of the page.

928 The only difference I noticed in the arrangement of titles is while substantially the same words are used in each instance the title of the case is run on one line in the Callahan edition and it is different in the Myers edition. In the Myers edition the title of cases is printed substantially as lawyers write them. Quite similar type is used in the syllabus of the cases; the first catch words are in small caps in both, and the balance of the catch words are in italics in both. I have noticed in a number of cases that the arrangement of the head-notes are quite similar; in some instances, where the language of the head-note is — a striking similarity is observed, and in some instances the language of the head-note is transposed in a different mode in one from what it is in the other.

Q. How are the pages arranged?

A. In the Callaghan edition I notice that in the margin the original pages of the Myers edition are retained, marked by stars to indicate where they begin. The cases, so far as I observe, follow in the same order in both editions. If there is any difference in them I didn't discover it. It seems to me they follow in the same order. The case of Homer *vs.* Zimmerman, in volume 45, page 14, of the Callaghan edition, there is three pages commencing on 14 that are very similar; some of the points of counsel are changed as being transposed in the Callaghan edition from what they are in the other.

In the case of Leahring *vs.* Hewitt, on page 23, is quite
929 similar.

Q. What part is similar?

A. I noticed in that case—and the way I come to discover it was in annotating—the case of Young *vs.* Bennett, in the 4th of Scammon, 47, is cited in both editions as Spring *vs.* Bennett, but the true citation is Young *vs.* Bennett, in the 4th Scammon. The head-notes in a number of instances have a very striking similarity, I notice, except that they are differently transposed; take the case of Allison *vs.* The People, in volume 45, page 37, and Reed *vs.* Hawley, on page 40; the head-notes are very similar in the two books. Then there is a statement of facts in Latham *vs.* Smith, on page 30 of the same volume; are quite similar. The general appearance of the pages as to size, typographical appearance, and typography are quite similar

There are a great many similarities between the two, and yet there are differences between the two volumes. A close examination shows that there are differences; for instance, mainly in the Myers edition, the counsel's names are printed in small caps, while in the other they are printed in italics. Those are matters that are apparent upon a careful examination; they would be passed by without particular notice, unless your attention was directed to find out where the similarities and dissimilarities in the two were.

Q. In a comparison of the volumes published by the defendants with those published by the complainant, state whether it
930 would be possible for a person to make the books so nearly alike as the book of the complainant without using the book of the complainant.

A. Unless the person possessed the abnormal memory of a certain clergyman of the city I should think it would be very difficult.

Q. Well, you mean unless he could recollect what was in the other book he couldn't make it without having the other book there?

A. It would be very difficult to print two books so similar without the person preparing the second one having the other one present.

Q. Would it be necessary for him to have it in order to make up the book?

A. From the references to the side-notes and pages it would be impossible for him to do otherwise than to have them present.

Q. What would be the effect of the publication of the books of the defendants on the sale of the books of the complainant?

A. I think a person purchasing an Illinois Report is quite as likely to purchase the one as the other. They would be published as Illinois Reports and not with reference to who was the reporter or who was the publisher. Of course, one would be a competing book with the other.

Q. Would a purchaser want both books?

A. Both sets of books?

Q. The books of the defendant- and the books of the complainant of the same volume.

A. No, sir; I think not.

931 Cross-examination by Mr. HIGH:

Q. How long have you been practicing law in Illinois?

A. A little short of two years.

Q. Were the points of similarity which you have testified to discovered by yourself or pointed out to you by some one?

A. Most all of them were discovered by myself. I can tell you how that came about, if you desire.

Q. Just as you like.

A. It grew out of my examination and reading Judge Drummond's opinion, and being familiar with the suit I examined some of them to see as to the merits of the controversy, and I discovered most of these things in that way.

Q. Was your attention directed to some of the points by any other person?

A. I think in conversation in relation to the matter, in Mr. Myers' store, at the time, he called my attention to some things and I called his attention to some things.

Q. Have you discovered any points of difference in the respective editions other than you have named, either in substance or in form?

A. The differences, you say?

Q. Yes; the differences.

A. Yes; there is some difference, I think, in the index—in the arrangement of the index—and in statement of cases than any other points that I noticed about them.

932 Q. Are not the indexes entirely different in the respective editions?

A. They are very different.

Q. Do you not find a large amount of matter in the statement of cases in the Callaghan edition which is not in the Myers edition?

A. Yes, sir.

Q. Do you not find a large amount of matter in the briefs of counsel in the Callaghan edition which is not in the Myers edition?

A. Yes, sir.

Q. Upon the question of general resemblance, of which you have spoken, in regard to typography and binding, is it not true that there is a general resemblance in those respects in the different reports of the different States?

A. Well, there is a resemblance in the different States or the reporters of the different States.

Q. For example, they have usually used small pica type in the body of the reports?

A. Well, some States don't use it. Louisiana don't use small pica.

Q. With the exception of Louisiana is it not a general rule that they use small pica type in the body of the reports?

A. I think that would be the general rule.

Q. And *premier* for the syllaba?

A. Yes, sir.

Q. Isn't there a special type, known among printers as syllabus *premier*, used for that purpose?

A. As to that being known among printers, I couldn't say. I know they use a type similar.

Q. In all respects, as far as you know?

933 A. In reports generally.

Q. And is it not the case that — many reports of the different States that the catch words are indicated by italics or small caps, as in these reports?

A. In some States they are and in some they are not.

Q. Would you regard the use of similar type in catch words or syllaba and labels on the back and such like as in themselves indications of infringement?

A. Where they are so strikingly similar, as in this case, I don't think but that the conclusion is almost irresistible.

Q. How, then, do you account for the fact that the same style of types are used by different reporters in different States?

A. Why, they simply use them; that is all I can say; different publishers using the same type make quite a different page sometimes.

Q. Are they not generally leaded in the same — in the different reports of the various States?

A. I believe now most of the reports are leaded.

Q. Would an ordinary observer or lawyer, in picking up a volume of these reports, without knowing that they were Illinois Reports and opening any page casually, be able to tell from the typography and the mechanical appearance what State reports they were?

A. I don't know that that can be done unless there was something on the page to indicate the State or which report it
934 was, unless you knew the names of judges or located them in that way.

Q. You mean, then, do you, that unless indicated in some such special way there is nothing about the mechanical appearance of the pages that would indicate the State to a casual observer or ordinary lawyer?

A. No; I don't think there is anything very striking in that point. The pages of these reports look very much like the New York Reports from their present appearance.

Q. The New York court of appeals?

A. Yes, sir.

Q. Now, the points of resemblance to which you have stated in the statement of cases and *and* in the head-notes have you examined to ascertain whether those matters are not stated in substantially the same manner in the opinion?

A. Both reporters have endeavored to state the substance of the opinion and yet they use different language to state it. In some cases the language is quite similar that is employed by both reporters.

Q. Then, as I understand, you find nothing in these head-notes that may not have been taken from the opinion in the Callaghan edition?

A. Oh, they may have been taken from the opinion.

Q. You are interested in some publication with the complainant, I believe?

A. Not very largely.

Q. He published your edition of the statutes?

A. Yes, sir.

935 Signature waived.

At this point the further taking of depositions in this cause was adjourned to two o'clock p. m., June 29th, 1881.

And thereupon complainant read in evidence the deposition of E. B. Myers as follows:

936 Testimony of E. B. Myers, taken before Henry W. Bishop, master in chancery of said court, the thirtieth day of June, A. D. 1881, on behalf of complainant.

Int. 1. Please state your name.
—. E. B. Myers.

Mr. LE MOYNE: We offer in testimony copies of volumes 39 to 46, except 40, as published by the complainant, of which Mr. Freeman appears to be the reporter, and also copies of the same volumes published by the defendants.

Q. Are you the complainant in this case?
A. Yes, sir.
Q. Have you examined the books of the defendants offered in evidence as exhibits?
A. I have.
Q. From that examination can you state whether any portion of the books as published by you have been copied by the defendants? If so, state what parts of the books have been copied.
A. I have examined them generally; their external appearances are as similar as possible to manufacture-books, with the exception of the name of the reporter underneath the volume on the lower title. I find the title pages are very similar, with few changes. In the table of cases I notice several errors in the names of parties that are copied in the defendants' edition. I mean errors made in my book. The whole arrangement of each volume is similar to mine. In
937 the catch line of the syllabus in many instances there is a marked similarity. Many of the statements of cases are very similar, and in the other words are omitted—colorable changes to convey similar facts. The paging throughout all the volumes is made to conform to mine, particularly in the commencement of each case. I find numerous pages where points of counsel and stipulations are contained in the star page, the page of my book, and, as I believe, the volumes are intended to substantially take the place of mine.
Q. State whether you made any comparison of the opinions in the books of the defendant and whether, from that examination, you are able to state whether the opinions have been copied from your books or not.
A. I believe the opinions have been copied.
Q. Have you prepared any examinations of cases where copies have been made from your book? If so, produce the same.
A. I have made a few examples.
Q. From each volume?
A. From each volume; yes, sir; which I have here.
Q. Attach them as an exhibit to your deposition. Explain how it is made.
A. I have printed in the left-hand column matter from my vol-

umes and in the right-hand column matter from the defendant's volumes. Where the wording is the same I have drawn a red line; where synonymous words or words having the same meaning are inserted I have drawn a double red line.

Q. In both columns?

938 A. In both volumes. Where there is no red line the matter is in one and not in the other.

Q. Is there any other explanation of this exhibit that is needed?

A. I have copied some from the table of cases in volume 39.

Q. You have copied from the table of cases and some from the syllabus?

A. Some from the syllabus and some from the statement of the case; occasionally from the opinion.

Q. Is there on this exhibit an indication, and, if so, what, to show from what part of the book the copy is made?

A. Yes, sir; the word syllabus, in the left-hand column, indicates that that matter is taken from the syllabus, and this indicates the volume and page.

Q. State what effect the publication of the books by the defendant has had on the sale of your books?

A. It has had a very serious effect; I have not been able to sell but very few of my volumes since the issue of this edition.

Q. State what you know, if anything, in regard to the way the volumes of the defendants have been advertised by them?

A. They have been advertised in this catalogue and circulars and extensively by traveling men who have sold sets.

Q. Have they been advertised as in any way different from the regular reports of the State by Mr. Freeman?

939 A. I think that recently they have, in some instances, stated that they were re-reported; they are sold by them in complete sets of Illinois throughout the country. I saw many sets myself while in Colorado last year, and parties who have purchased have expressed considerable surprise on my informing them that they were not the official edition of the Illinois reports. So far as these volumes are contained in sets that have been sold, — a very common occurrence.

Q. Were the volumes of the books in question stereotyped?

A. They were.

Q. At the time of the publication of the books of the defendant had you any number of these volumes on hand?

A. I had a large number of them.

Q. A large number of each volume?

A. Yes, sir; a large number of each volume, and also stereotyped plates of each of them.

Q. What number of books had you on hand at that time?

A. I am unable to state now just how many, but I had a large number. I could easily produce more from the plates; having the plates, I could quickly reproduce plenty of them.

Q. Quickly and cheaply, could you not?

A. Yes, sir.

Q. In this exhibit in some cases you have stated what appears to be the opinion of the court. State what that is. Is that a *verbatim* copy of the opinion that is given in the book?

940 A. Yes, sir; a *verbatim* copy of the quotation.

Q. Volume 39, page 9, there is a note with regard to that; what is that?

A. It is where the syllabi in the right-hand column does not correspond with the language as stated by the court on page 13, where I have made my comments. It appears as a comment in the exhibit and is not in the parallel columns. This explanation is made for the purpose of saving time in going over each one.

Cross-examination by Mr. HIGH:

Q. Was the comparison between the two editions shown in the exhibit which you have just offered made by yourself in person?

A. A large portion of it—that that was not made—I have examined. I had some assistance in doing a portion of it.

Q. Have you verified in all instances personally these comparisons?

A. Yes, sir; I believe I have in every case.

Further cross-examination continued.

941 Defendants' testimony concerning infringement of volumes 39 and 41 to 46, inclusive, embraced in supplemental bill.

And thereupon defendants, to maintain the issues on their part as to the infringement of volumes 39 and 41 to 46, inclusive, of the Illinois Reports embraced in the supplemental bill, read in evidence the following depositions:

The deposition of Joseph M. Bayley, as follows:

942 Testimony of Joseph M. Bailey, taken before Henry W. Bishop, master in chancery of said court, the thirteenth day of October, A. D. 1881, on behalf of defendants.

Int. 1. Please state your name, residence, and occupation.

A. My name is Joseph M. Bailey; I reside at Freeport, in this State; I am one of the justices of the appellate court for the 1st district of Illinois.

Q. How long have you been a member of the bar?

A. I have been a member of the bar of the State of Illinois since September, 1856.

Q. In practice and on the bench during all that time?

A. Yes, sir; I have been engaged in the law practice from that time up to August, 1877, at which time I was elected circuit judge.

Q. What, if anything, did you have to do with the editing of volume 39 of the edition of Illinois Reports published by the defendants mentioned in the supplemental bill in this cause?

A. I was employed by the defendants some time in the early part of the year 1877 to edit that volume of reports, and in prosecution

of that work I prepared the head-notes of the various cases and also foot-notes, and in a few cases I prepared a statement of the facts and the briefs of counsel.

Q. You say in a few cases. Were they prepared in many cases or in any case, aside from the few that you have mentioned?

943 A. I prepared a statement of facts and a short statement of the briefs of counsel, but as the volume was afterwards published no portion of these statements were used in the publication.

Q. None of your statements of facts and briefs of counsel?

A. No, sir; none of them; as the volume was published my work consists of the head-notes and foot-notes. I also read the galley proofs and read the plate proofs of about one-half the volume. When the work was at that stage I learned of the commencement of this suit, and, at the suggestion of the defendants, I discontinued the work on the volume and never resumed it afterwards.

Q. Who completed the volume, if you know?

A. I only know from hearsay.

Objected to.

Q. Well, as I understand you, the volume, as published by the defendants, contained the head-notes and foot-notes as prepared by you?

A. Yes, sir.

Q. State, if you please, in what way those head-notes were made.

A. I prepared the head-notes by stating carefully each opinion as I found it in the 39th volume of the Illinois Reports as published by Mr. Freeman. From a study of the various opinions I wrote the head-notes, endeavoring to embody in them a short statement of the principles involved in the opinions.

Q. The opinions themselves, I understand, you took from Mr. Freeman's published volume?

944 A. I had no other copy of the opinions than that which I found in his volume.

Q. State if you made any use, and, if so, what use, of the head-notes as prepared by Freeman in his volume.

A. The head-notes which I prepared I prepared entirely independently of Freeman's head-notes. I received no assistance from them one way or the other.

Q. State whether in any cases you used in your head-notes the language of the court or simply endeavored to give your own idea of the decision.

A. In the preparation of the head-notes wherever I found the principles sharply and tersely stated in the opinion I copied the exact language of the opinion; where is was impracticable to state what I conceived to be the principle involved in the language of the court I used language of my own.

Q. Did you in all cases adopt or use Mr. Freman's language of the head-notes?

A. No, sir; in a good many cases upon comparison there will be found to be a similitude and in some an identity of language, but I think in every case that will be found to be where both Mr. Free-

man and I took the language of the court in constructing syllabi of cases.

Q. State, if you please, in what manner you appropriated the foot-notes that you appended to the different cases.

945 A. If I remember rightly, in Mr. Freeman's volume there were no foot-notes, at least none made in reference to other adjudged cases, unless it may have been in one or two instances.

Q. The foot-notes were prepared by me, with the assistance of a clerk, by examining the Illinois Reports and making reference to those cases where the same principle had been decided elsewhere; in some of the notes I referred also to the decisions found in other States.

Q. What use, if any, did you make of Mr. Freeman's work in the preparation of those foot-notes?

A. There was no use of it that I did make or could make of it in the preparation of the foot-notes other than what was afforded me by the opinion itself. The foot-notes were entirely constructed from an independent investigation of other adjudged cases.

Q. And entirely the result of your own labors, I understand?

A. Yes, sir.

Q. And that of the assistant that you have?

A. My own labors and that of Mr. Stearns, a clerk who was then studying law in our office.

Q. I will ask you whether in the preparation of your head-notes you had in view any general plan as to whether you would follow the opinion of the court in the preparation of the note or use your own language; whether you adopted any general rule upon that point?

946 A. My plan was to use the language of the court wherever I thought that sufficiently succinct and brief to constitute a proper syllabus; wherever I could not do that I used my own language.

Cross-examination by Mr. LE MOYNE:

Q. Judge, what material did you have to work with in making up this volume? This question is not intended to include that part of the labor embraced in preparing foot-notes.

A. In preparing the head-notes I used exclusively the published opinion of the court.

Q. Did you have any other documents or information in regard to all that you put in the volume except the foot-notes, except the Freeman book?

A. I had no other copies of the notes except those appearing in the printed volume.

Q. Did you have any other copies of the arguments of counsel?

A. No, sir; I did not. Let me state that, according to my recollection—I haven't specifically examined the volume lately—but few of the notes in that volume that were in Freeman's volume have any statement of the case or briefs of counsel. Where such papers were contained I prepared in any single volume a short statement

of the facts and arguments of counsel, briefly abridging the same from the matter I found in Freeman's volume; but in the published volume none of that work was used; it was entirely omitted.

Q. Did the work go from you to the printer?

A. Yes, sir.

947 Q. And was returned by you for the proof to be read?

A. Yes, sir.

Q. In speaking of the foot-notes do you intend to refer exclusively to such of them as contained references to other adjudged cases?

A. According to my recollection, all of the foot-notes I prepared upon references to other adjudged cases. There are certain foot-notes in the volume prepared by another hand—at least not prepared by me—where certain principles are discussed, and it is possible some of them may not refer to other authorities. Those which I prepared consist merely of the references to other adjudged cases involving the same principle.

Q. I understand you, then, the notes were sent by you to the printer and prepared wholly from the book of Freeman and your examination of other authorities for the purpose of citing other adjudged cases?

A. Yes, sir. I had no other books before me and no other documents except that volume and the other books in my library.

Q. Did you read the syllabus of Mr. Freeman's to each case?

A. I have no doubt I read the syllabus in probably every case.

Q. Before preparing it?

A. Not usually before; no, sir; I looked at the opinions first.

Q. Well, they were in there?

A. Oh, they were all in there; yes, sir; but I can't say, though, now, from memory, as to the way in which I looked at them.

948 I have no doubt I read all the syllabis in his book as well as the opinion.

Q. In preparing the syllabus was there any effort made on your part to avoid copying his?

A. Well, I couldn't say that there was not, because in a good many instances I regarded the language of his syllabi as very awkward and his statement of the principles involved in the decisions erroneous; in these respects I have certainly intended to avoid the errors into which he had fallen.

Q. Are these the only respects, then, in which you have sought to avoid copying Mr. Freeman's syllabus?

A. Oh, I didn't copy them at all; if I have used the same language it is merely language which I copied from the opinion of the court. I don't think I copied his syllabus in any instance.

Q. My question is whether you intended to make it different and not to copy?

A. Yes, sir; I intended to write an entirely new and independent syllabus of the case and to avoid repeating or copying what he had done.

Q. Why did you seek to avoid copying Mr. Freeman's syllabi?

A. Simply because I was writing an independent set of syllabi for the cases.

Q. Look at volume 39, now presented to you, and state if that is a copy of the book prepared by you.

A. It seems to be.

Q. Now, look at page 17. I wish to ask you where the
949 matter appearing on pages 16, 17, 18, and a part of 2d 18 was obtained from?

A. That matter to which you refer was not prepared by me and I cannot tell you.

Q. Was not prepared by you?

A. No, sir; I did not prepare any portion of the statement of facts and the briefs of counsel as they now appear in the volume. The portions which I prepared were not used. This was made by another hand.

Q. And you don't know where that came from, then?

A. I have no personal knowledge at all. I have not compared this with what I prepared, but it was my understanding that this was not what I wrote, and I have no doubt that is the fact.

Q. Can you tell by examination whether that was the same as prepared by you?

A. Allow me to take that volume and I have no doubt I can tell you. This was not my work; the statements of cases which I prepared were very brief; none of them were used, as I understand it.

Q. Look at page 591, the case of Bliss *vs.* Clark. Was any part of that prepared by you?

A. None, except the syllabus.

Q. The stipulation?

A. I couldn't tell from recollection. My impression is this is not part of the work I did.

Q. Judge, in sending the matter to the printer was the book of Freeman cut up and used by the printer?

A. No, sir.

950 Q. Or were the opinions recopied?

A. I sent to the printer only the matter which I prepared. I did not send to the printer copies of the opinions. Where he obtained his copies of those I do not know.

Q. You sent your matter so arranged that the opinions were to be supplied to him by other persons?

A. Yes, sir; he was to obtain those from some other source, and when the proofs came back to me there were proofs, not only of the syllabi and foot-notes, but of the opinion.

Q. Did they send back their copy?

A. No, sir.

Q. They only sent back your copy?

A. They sent back my manuscript copy; that is all.

Q. They didn't send back the copy from which the opinion was set up?

A. No, sir.

Q. Did you prepare the table of cases?

A. You mean the table appearing at the fore part of the book?

Q. Yes.

A. No, sir; I did not.

Q. Did you prepare the title page?
A. No, sir; I did not.
Q. All you prepared, then, as I understand it——
A. Were the head-notes and foot-notes.
Q. Of the whole volume?
A. The entire volume; yes, sir.
Q. Were they printed as prepared by you in the whole volume?

A. Let me correct myself. I prepared the head-notes of the
951 whole volume, and also prepared foot-notes of the whole volume, but as published I found some foot-notes by another hand in addition to those I prepared, but with the exception of those additional notes I think they were published as I prepared them.

Mr. HIGH: State whether in any case you copied, used, or followed the head-notes of Mr. Freeman in preparing your notes.

A. If I did it was incidentally; it was not done intentionally—that is, if there is an identity of language it was not caused by my copying Mr. Freeman's head-notes, but simply from the fact that I happened to take the same language from the opinion, but in no case did I copy his head-notes.

Q. Or use them?
A. Or use them in the preparation of those I prepared.

Mr. LE MOYNE: Did the defendants request or caution you not to use Freeman's head-notes?

A. I remember no conversation on that subject or to that effect.

It is stipulated that the signatures of all witnesses to their deposition- on either side are waived.

And thereupon defendants read in evidence the deposition of Marshall D. Ewell as follows:

952 Testimony of Marshall D. Ewell, taken before Henry W. Bishop, master in chancery of said court, on Thursday, the twentieth day of October, A. D. 1881, on behalf of defendants.

Int. 1. Please state your name, age, residence, and occupation.

A. Marshall D. Ewell; residence, South Evanston; age, thirty-seven; occupation, lawyer.

Q. How long have you been a member of the bar?
A. I was admitted in 1868, I believe the 22d day of April.
Q. You are one of the defendants in this cause, I believe?
A. I suppose I am. I was in the original bill, and I suppose I am in this.

Q. What, if anything, did you have to do with the preparation of any of the volumes of Illinois Reports published by the defendants, Callahan & Co., mentioned in the supplemental bill, being volumes 39 and 41 to 46, inclusive?

A. I had nothing to do with any of them except 44 and 45, according to the best of my recollection.

Q. State what you did in connection with volumes 44 and 45.

A. That is, as they appear in their present form; you mean as they were printed?

Q. State in your own way as your work was originally done or as the volumes now appear.

A. I prepared volume 44. I prepared the head-notes, the syllabus, the statements of cases, and they were all printed. The
953 work on 45 was suspended by the filing of this bill. With reference to the amount of matter that I prepared, that was used, I am informed, although I have not made a——

Objected to.

I understand that my work was not used.

Q. In volume 44?

A. Not as I remember it. I understand that only the head-notes and a portion of the foot-notes and the index were used.

Q. Who prepared the remainder of that volume?

A. I am informed and believe that Mr. Denslow did, although I do not know of my own knowledge.

Objected to.

Q. You may go on and state how you prepared the head-notes to both these volumes.

A. I don't know that any use was made in 45——

Q. Of your head-notes?

A. Of my part of it. I don't know that any use was made of any of it, unless it was, perhaps, some of my foot-notes. In reference to that you will have to inquire of Mr. Denslow. I don't know in reference to the preparation of the head-notes of 44. I invariably read the opinion and arrived at my conclusion as to what the head-note ought to be from such reading, except where the court had formulated the rule of the case, in which case, if I thought the words appropriate, I used the language of the court in preparing the head-notes.

Q. Did you use or copy Mr. Freeman's head-notes in the preparation of your own?

954 A. I did not. If, in any instance, there appears to be a similitude between Mr. Freeman's head-notes and mine it arises from the fact that the court used the same language or from the similitude of the subject-matter and not because it was copied. An examination of the head-notes will disclose that fact, I believe, to any conscientious inquirer.

Q. State whether you had any general rule or plan in view in preparing these head-notes as to whether you would use your own language in stating a point decided or the language of the court.

A. When I thought the court stated them in better language than I could I always used their language. Where they stated them in what I thought too diffuse a style so that it would take up too much room to use their language I used my own.

Q. Condensed it, I suppose?

A. Yes, sir; and I stated the facts pretty fully in a head-note where there was anything peculiar about them.

Q. You mean, then, that that was your general plan?

A. That was my general plan.

Q. I will ask you whether in the head-notes that you prepared for volume 45 you pursued the same plan you have related in regard to 44?

A. Precisely the same in reference to all the volumes I prepared.

955 Q. You don't know whether Mr. Denslow used your head-notes for 45?

A. I do not.

Q. State how you prepared the foot-notes for these volumes.

A. From an independent investigation of the reports; copied nothing. In fact, there was nothing to copy.

Q. You mean that Mr. Freeman's volumes had no foot-notes?

A. They have no foot-notes, as far as I remember—that is, no notes giving reference to other cases. I don't remember of any.

Q. Did you prepare the index to either of these volumes?

A. I prepared the index of 44. The preparation of 45 was suspended before I finished the index.

Q. State how you prepared the index of 44.

A. I had a set of the proofs of the head-notes of 44; cut them up; classified and arranged them, and made the index entirely from those proofs without ever looking at Mr. Freeman's index.

Q. State whether you have any interest of any kind in these volumes mentioned in the supplemental bill.

A. I have no interest whatever. I did the work for a stated compensation, which was paid long ago.

Cross-examination by Mr. LE MOYNE:

Q. What compensation?

A. What compensation was paid, do you mean?

956 Q. Yes.

A. Oh, I think he paid me, if I recollect right, about $150 a volume; one hundred and twenty-five or a hundred and fifty. I knew I thought it was very small at the time, but I had made a contract. I don't remember; I wouldn't be certain about that, but that is my recollection now. I would have to look at my book to get the exact figures.

Q. Did the copy go from you to the printer, and did you correct the proof?

A. Yes; I think I sent it directly to the printer. I did correct proof.

Q. Did the printer send the proof directly to you?

A. He did in every case, I believe.

Q. Was the opinion with the matter that you sent to the printer?

A. It was.

Q. Was it printed or in manuscript?

A. The copy of the opinion which I sent to the printer was printed.

Q. What was it taken from?

A. I took it from Mr. Freeman's reports—that is, the opinion.

Q. In preparing the head-notes did you have Mr. Freeman's head-notes before you?

A. I had the volume there, but derived very little assistance from it.

Q. I am not asking you whether you derived assistance, but am asking whether it was there—whether you had it before you.

957 A. Yes; of course I had it. I couldn't get the opinions in any other place but to read them from the printed book. I didn't go to Ottawa to prepare them, but prepared them in my own room.

Q. Did you have any other material from which to prepare the foot-notes as you prepared them except the book of Mr. Freeman?

A. That and the digest of the other reports was all.

Q. Did you prepare the title page?

A. I think I did.

Q. Did you prepare the table of cases?

A. I did not prepare the table of cases; I think that I didn't. I believe the table of cases is printed the last thing. I am quite sure I didn't the second volume, and my impression is I didn't the first; I am quite sure I didn't.

Q. You say you don't know whether the work prepared by you was used or not; what did you do with it?

A. Which—volume 44?

Q. 44 and what you did on 45.

A. When the work was stopped I stopped, and that was the end of it; it was up in type, but what use they made of it or what they did with it I don't know.

Q. Was 44 in type?

A. 44 was in type, I think, except the title page and, perhaps, the table of cases; 45 was partly in type; just how much I don't remember.

958 Q. You left the work you did in the hands of the other defendants, Callahan & Co.?

A. I quit just then and there; did nothing more.

Q. Did you compare, while the work was being done by you, your head-notes with Mr. Freeman's?

A. Not at all; after I had finished my head-notes I did sometimes look at it after it was done; not before.

Q. You never read his head-notes of a case until after you prepared your own?

A. No, sir.

Q. Then you read his?

A. I did in some instances, and in some I did not.

Q. Well, those that you did not read you cannot tell whether they are similar or not, can you?

A. I don't know whether they are or not.

Q. You don't say they are not similar, do you?

A. I have never said they are not similar; they must be to a certain extent similar or they would not be correct—that is, assuming they are both correct.

Q. In volume 44 were there in any instances preceding the cases statements of the facts and arguments of counsel?

A. Yes, sir; there were—that is, in the original, you mean?

Q. No; in the book prepared by you originally, volume 44.

959 A. There were statements of facts; my recollection is that the arguments of counsel were cut out entirely; that is my recollection; that is the way I prepared them. I don't know how it is in the printed volume.

Q. In the statements of facts which you used were all those statements taken from Mr. Freeman's volume?

A. The information was derived from him.

Q. Wholly?

A. Yes, sir; I believe that in one or two instances I got information from cases that had been through the supreme court before, but excepting those few cases the information was derived from Mr. Freeman's volume; whether any statements of facts were used in the volume as printed I don't know. I am informed they were not.

Q. Can you tell how much of 45 was prepared by you?

A. That I don't know, Mr. Le Moyne. I can only remember that I got into the volume a little ways and was stopped; just how far, whether it was one-half or one-third done, I don't remember; that was four or five years ago.

Q. Then I understand you were preparing volumes 44 and 45 when the original bill in this case was filed?

A. That is it exactly.

And thereupon defendants read in evidence the deposition of Van Buren Denslow as follows:

960 Testimony of Van Buren Denslow, taken before Henry W. Bishop, master in chancery of said court, on Saturday, the twenty-second day of October, A. D. 1881, on behalf of defendant-.

Int. 1. Please state your name, residence, and occupation.

A. Van Buren Denslow; reside in Chicago; my occupation is that of an editor.

Q. And have you been a lawyer by profession; and, if so, how long?

A. I have been a lawyer, I believe since 1855 or 1856.

Q. You are one of the defendants in this cause, and the same who originally testified in the original bill?

A. I presume so; I was in the original bill and I presume I am in this.

Q. What, if anything, did you have to do with the preparation of the Illinois Reports published by Messrs. Callahan & Co., mentioned in the supplemental bill, being volume 39 and volumes 41 to 46, inclusive?

A. The work on 41, 42, and 46 is entirely mine; 39 had been partially done by Judge Joseph M. Bailey, and at the point where he stopped I took it up and completed it.

Q. At what point was that and what did you do towards its completion?

A. The syllabi had been prepared and some foot-notes, both of which I used, so far as they went, almost without alteration.
961 All the matter between the syllabi and the opinions, so far as prepared by Mr. Bailey, I omitted, including the statement of the court from which the case had come up, the name of the judge of the court below, the statement of facts, if any, the names of counsel, and their briefs. For that portion of the matter I went to the records and files of the supreme court in whatever districts the matter required, and supplied that portion of the matter from that source. The titles of the cases, also, preceding the syllabi, I derived from the records.

Q. You mean the records of the supreme court, do you?

A. The records of the supreme court, and I obtained, by comparison of the opinion of the court as published by Mr. Freeman with the original opinion of the court as filed or recorded, a new and correct copy of the opinion in each of the cases in volume 39 and in all the other volumes from 41 to 46, inclusive.

Q. Do I understand you that you took the opinions printed by Freeman and corrected them from the original manuscript on file in the supreme court?

A. Yes, sir.

Q. In all cases?

A. In all cases.

Q. State whether those corrections were frequent in different cases and state generally their nature.

A. The corrections, owing to certain peculiarities in Freeman's mode of printing, were very numerous in matters that didn't
962 change the sense, or, at all events, what would seem to be numerous, where the simple business of the reporter was to print a written opinion as filed. There were also some corrections which were corrections of the substance, a few arising out of misprints and a few of them out of an incorrect reading, as I conceived of the judge's writing. As a specimen of the character of the changes that were merely literal and didn't go to the substance, I might say that two of the judges, Breeze and Walker, were in the habit of using in their opinions the words "whilst" and "amongst," for which Mr. Freeman was in the habit of substituting the word "while" and "among," and the slight changes in the letter of the opinions, by reason of this and similar differences of taste between Mr. Freeman and the judges, was such that a few slight changes would be necessary in almost every opinion in that volume, and in some of them I should think the number would reach half a dozen.

Q. In all cases where you found these differences between the opinions as printed by Freeman and the manuscript opinion of the court, whether the differences were merely slight or formal, or whether they were matters of substance, what did you do in the opinion as printed by you?

A. I marked the change that was to be made on the opinion as

printed by Freeman and sent that as copy to be used in printing the opinion correctly.

963 Q. How did you make this comparison of the opinions with the original on file—I mean as to actually reading them or otherwise?

A. I had an assistant to read the opinion as printed by Freeman and I read myself the opinions as written by the court and filed, and when the reader came to a difference I made it a subject of comparison and correction.

Q. Making each correction, you mean, as the mistake was discovered?

A. Yes, sir.

Q. Judge Bailey has testified, as regards volume 39, that he read a part of the plate proofs; that part of the volume was in type. What did you do with that portion of it which was in plates, in type, as regards changes and substitutions you made?

A. The portion which he refers to of the syllabi and the footnotes I retained almost without change, the only cases in which I made any changes being those in which after an examination of the papers on file I thought some points in the syllabus had been incorrectly expressed, or that some point essential to a correct statement of the decision rendered by the court had been omitted.

Q. What did you do with the statements of facts and briefs of counsel in that part of his work which was in plate when you took hold of it?

A. I made new statements, beginning with the statement of the court from which the case had come up, which is the first statement following the syllabus. I made new statements for the mat-

964 ter between the syllabus and the opinion, substituting them for the statements made by Judge Bailey, and sent them to the printer.

Q. And they were substituted in the plates for Judge Bailey's work?

A. Yes, sir; the plates were changed by recasting and slicing and punching, &c., so as to adapt them to any work.

Q. How was it with the corrections of the opinions as you have testified, where the opinions were already in plates?

A. In a few cases ten or twelve or twenty lines would be involved in a correction, and I think, according to the mode in which the stereotypes transact that portion of the printing business, that that portion would be recast. In the slighter corrections—as for instance, where one or two lines were added or taken off to adapt it to the literal changes that would be made—the result was accomplished by a system of punching and filling in the new lines, as, for instance, where the word "among" was changed to "amongst," and any slight change of that kind. My impression is that the index of 39 was also prepared by me.

Q. And how?

A. The index was prepared by taking the syllabi of the book as they had been set up by Callahan's printers and arranging the different statements of points as they had decided under as many differ-

ent heads as I thought any lawyer would be likely to look under for them.

965 Q. In what condition was volume 43 when you took hold of it?

A. Mr. Levi J. North had written syllabi and foot-notes for the volume, and my impression is that the first 120 pages also had been put in type or was in proof. I don't know that any of it had been cast, and it is quite possible that in the first fifty pages of volume 43 there are a few of Mr. North's syllabi retained. In proceeding with the work, however, I concluded not to make further use of that material and rewrote the syllabi almost entirely for, I think, the first 50 pages, and then entirely for the balance of the book. Exactly where this determination was made, whether at the 30th or at the 50th or further on, I would not be certain, but I think that it was at about the 50th page, so that after that time the syllabi are entirely mine. Mr. North's foot-notes were preserved, and the same course was taken in relation to the title of cases and the matter between the syllabi and the opinion as I have described as being taken with 39—that is, Mr. North's matter was thrown away and the titles of cases and the matter between the syllabus and the opinion and corrected opinion were obtained from the files and records of the supreme court.

Q. In what condition was volume 44 when you took hold of it?

A. Mr. Ewell had prepared the syllabi and statements of facts, as far as *they* were any, and foot-notes for volume 44 and

966 volume 45; one of them was in a more advanced stage of printing than the other. I don't think I could state which of the volumes was in a more advanced stage as to printing.

Q. What is your best recollection?

A. I don't recollect; the two volumes stood associated in my mind as done by the same person, handed to me in nearly the same condition, and I took the same course as to both, of going to the records for the title of the cause and the matter between the syllabus and the opinion, and for a revised copy of the opinion used Mr. Ewell's head-notes on syllabi, almost literally, making but very few changes, additions, and for one of the volumes, I think, I used his index and for the other I made the index myself.

Q. In what manner?

A. In the same manner as I have described as having made the index of 43 and 39.

Q. As to that portion of Mr. Ewell's work on volumes 44 and 45 which was already in plates when you succeeded him, what, if anything, was done as to changing the plates?

A. New plates were cast for the additional matter which my work brought in, and my impression is that for the two volumes several hundred pages of new matter had to be cast.

Q. What was done with the plates, as to the changes which you found necessary in the opinions?

A. The plates were cut and altered and added to, so as to

967 adapt them to the revise that I had furnished.

Q. Then, if I understand you, you rejected all the names

of cases, the names of the court from which the cases came, the names of counsel, statements of facts and briefs of counsel which had been prepared by Judge Bailey for volume 39, by Levi North for volume 43, and by Mr. Ewell for volumes 44 and 45; am I correct?

A. The word rejected might be regarded as applying to the question whether the same title of the case or other of the same matter was finally used, and as a matter of course the title of the case which I would discover to be correct from an examination of the records would in most instances, or in many instances, be the same as that with which I had been supplied, in which case it would be the only title that could be used, and so of the other matter. What I mean is that before sending the matter for use to the printer I examined the original records and derived my authority for its use and my knowledge of whether it was proper or not, and made up my mind whether to use it or not as the result of that examination, and not as the result of meeting with it in a copy furnished me by Judge Bailey or Mr. Ewell or Mr. North.

Q. To what portion of the matter does your last answer refer?

A. The title of the cause, the matter between the syllabus and the opinion, and the opinion itself.

968 Q. Did you retain any of the statements of fact or briefs of counsel as prepared by Bailey, North, or Ewell?

A. No, sir.

Q. How did you prepare those?

A. I prepared those from the records of the cases in the supreme court.

Q. What cases were included in those records?

A. It was a record of the case as returned by the court below, the briefs of counsel, printed abstracts of the records, printed arguments or written, as the case might be, and a sort of medley of miscellaneous papers that appear in nearly every case, in the same bundle with the others, sometimes relating to a rehearing and sometimes to interlocutory steps in the progress of the case, which were not essential to my purpose; and there are also the recorded opinions on file, but, I believe, in all cases, ultimately, I was able to secure the original opinion, which, of course, dispensed with any use of the recorded opinion.

Q. You mean the original in the handwriting of the judge?

A. Yes, sir; on file.

Q. And that is what you use?

A. Yes, sir. After beginning in a few cases down in Springfield these opinions didn't seem to be on file; they were afterwards supplied by the reporter, and some work which I had at first done from the recorded opinions I afterwards did over again from the written opinions.

Q. From the recorded opinions you mean opinions as transcribed by the clerk into the records?

969 A. Into the books; yes, sir.

Q. Then, in regard to these statements of the facts of the

cases, counsel engaged, and the briefs of counsel, do you mean that you rewrote those yourself wholly from the records?

A. Yes, sir.

Q. Did you make any use whatever of Mr. Freeman's correspondent matter?

A. In some cases, where Mr. Freeman had introduced into his statement of fact long copies of document, which, as I found upon examining the papers on file, had generally been cut out of the abstract of the record with the scissors, there would be such a correspondence between the copy used in Mr. Freeman's statements of fact and this document or pleading or agreement, as the case might be, and those on file that by comparing the two I could, by correcting, in case it was necessary, the copy as published by Mr. Freeman, in the same manner as I made use of Mr. Freeman's copy in copying the opinion—I could lessen the amount of copying necessary in making the statements of fact, and in some of those cases that was done.

Q. In how many cases?

A. I couldn't tell the number; but where, for instance, a printed abstract of the record on file included, as part of the record of the case, some contract or agreement or pleading, I would be likely to compare the statement furnished me in the work of Ewell or Bailey with the original document and, after correcting it, make use of it.

970 Q. Did that occur in many instances or few?

A. I couldn't state positively; I should think it might have occurred in eight or ten of all of the volumes. There were not many instances in which long documents of that kind were printed. In some instances I was permitted by the clerk, where there were surplus copies of the abstract on file, to take the abstract itself and cut it for the purpose, in which case I took that course.

Q. Do I understand that the cases where you thus permitted the work of Mr. Freeman to remain in the statements of cases in the volumes as partially prepared by Bailey, North, and Ewell were cases where Freeman had copied literally into the statement some contract or other paper from the record?

A. Yes, sir; the documentary——

Q. That you furnished in the record itself?

A. Yes, sir; I found the entire document in the record and found that Freeman had made a correct or an incorrect copy, as the case might be, and I used his as a basis for obtaining a correct copy in the same manner as I used the opinion.

Q. How was it with the brief of counsel in these volumes as partially prepared by Bailey, North, and Ewell?

A. In those cases I either was furnished by the clerk a copy of the brief —, where there were more than two or three on file, with the privilege of cutting it, and was permitted to cut it. I think that applied, probably, to not more than a dozen cases in all, per-

971 haps not more than six—mostly at Mount Vernon; but in the other cases, where I was not furnished with any printed brief with the privilege of cutting, I condensed the brief of counsel

from the written or printed briefs, writing out the matter in manuscript and furnished it in manuscript to the printer.

Q. You mean from the printed or written briefs filed at Springfield, Mt. Vernon, and Ottawa?

A. Yes, sir.

Q. Did you use any portion of Mr. Freeman's printed matter in this preparation of briefs of counsel?

A. No, sir; not at all.

Q. What did you do in the preparation of volumes 41, 42, and 46 of the Callahan edition?

A. In those volumes the entire work was mine. The mode of preparation in other respects was the same—that is, I obtained the title of the cause and the matter between the syllabus and the opinion from the record, and revised the opinion from the record and wrote out the syllabus from the examination of the printed opinion and the record.

Q. You mean the record on file in court?

A. The record on file in court, sometimes receiving some aid in the work from an examination of the briefs on file.

Q. Aid as to the facts of the case?

A. Aid as to arriving at the question that was in litigation and a more correct statement of the decision of the court.

Q. In preparing your statements of the case for these vol-
972 umes did you make any use of Mr. Freeman's?

A. No, sir.

Q. None whatever.

A. Other than as I have said—oh, in these two volumes?

Q. I mean volumes 41, 42, and 46.

A. I went to the records for all the matter between the syllabus and the opinions for these volumes.

Q. Including by that, do you, the name of the court below, the names of counsel, statements of fact, and the briefs of counsel?

A. Yes, sir.

Q. Did you make any use whatever of Mr. Freeman's matter in these particulars in volumes 41, 42, and 46?

A. Not unless it may have been, as I have said, to facilitate the obtaining of a correct copy of some document or pleading that was on file.

Q. Do you mean by that that in some instances you did retain where Mr. Freeman had copied a contract or document from the record his printed copy of it?

A. After comparing it with the original I couldn't state whether there was any case of that kind in these three volumes without examining them, but there might have been. If there had been a document covering several pages and forming an essential part of some agreed case or agreed statement of fact, or which I found in the abstract of the record and found that Mr. Freeman had made use of
it and had a copy of it, I might take that copy as the shortest
973 and most convenient mode of getting a correct copy, relying not on Mr. Freeman or his copy, but on myself and my own examination; my theory of doing the work being that, for the pur-

pose of obtaining a correct copy of anything that I found upon the record, I had the right to take anything that I could find in print, whether in newspaper or in Mr. Freeman's book.

Q. But you have no recollection of any case in volumes 41, 42, and 46 in which you did that as to the statements of fact?

A. I couldn't tell whether those cases arose without examining the volumes.

Q. In the preparation of the briefs of counsel in volumes 41, 42, and 46 did you make any use of Mr. Freeman's work?

A. I did not.

Q. Was your copy of these briefs furnished to the printer in manuscript, or in what manner?

A. In manuscript.

Q. How was it where the clerk would permit you to take the printed brief.

A. In such cases it would be furnished in cut extracts from the printed brief.

Q. And in other cases you sent them in your own manuscript, I understand?

A. Yes, sir.

Q. How did you prepare your head-notes to any and all of these volumes, including 39 and 41 to 46, inclusive, where you did not use the head-notes of the editors?

974 A. In 39 I used all of Mr. Bailey's head-notes without examination, and if there are any of mine in 39 they are a few slight head-notes added after looking at the records on the theory that some points had been omitted in the preparation of the previous head-notes. In the preparation of the head-notes, where I undertook the work, I first made a study of the case with a view of satisfying myself as to what the nature of the controversy was, and I made an intellectual study—that is, I studied for the sake of the interest that I felt in it—of the law that was involved in the case, and, having arrived at what I thought was the nature of the controversy and the mode in which the court had decided it, I sat down and wrote in my own language the most concise statement that I was able to make of the points involved. The syllabi of 41 and 42 were first prepared by me before going to the record, and afterwards revised in the light of the records. Volume 46 was prepared while I was at work upon the records, and I had the advantages of the records in preparing the syllabus in the first instance.

Q. As regards such of the head-notes as you prepared before going to the records from what sources did you prepare them?

A. From a thorough reading of the case as printed in Freeman's volume.

Q. Did you make any use whatever in those or in any of the head-notes that you prepared for any of the volumes of Mr. Freeman's head-notes?

975 A. I made no selections; I read the head-notes.

Q. Did you copy or use or follow his head-notes in any way or manner?

A. No, sir.

Q. As regards the head-notes which you prepared to such of Mr. Ewell's work as he left incomplete, did you prepare those in the same manner as you have already testified in regard to the other volumes?

A. Yes, sir.

Q. And the same way with Mr. North's work?

A. Mr. North's work I prepared, commencing with the exception, it may be, of two or three or half a dozen paragraphs, the head-notes in the first fifty pages.

Q. How did you prepare all the indexes of the different volumes that were prepared by you?

A. By taking the completed volume as printed by Callahan & Co. up to the index, cutting out the syllabi, and, so far as that matter would go, arranging it under appropriate heads for an index, and where the same matter required to be indexed, as it frequently did, under a good many heads, in order to make it easy to refer to, I filled in the writing essential to the making up of the complete index.

Q. State whether you copied or used or followed Mr. Freeman's index in any way.

A. Not at all; those were not before me in the preparation of the index work.

976 Q. How was it with regard to the title pages and tables of cases of the volumes prepared by you?

A. A certain amount of resemblance between Freeman's title case and mine would be unavoidable, inasmuch as Freeman's volume purported to be a volume standing in a certain designated order with reference to all the other volumes of Illinois Reports that had ever been officially reported, and the volume as I have prepared it would necessarily stand in the same order; one would be the 39th volume of the Illinois Reports and the other would be the one related to certain terms of court and the other would relate to the same terms of court, and the title page was prepared in those cases with a view of bringing out so clearly the fact that this was not Freeman's volume that nobody would make a mistake about it. It was prepared so as to make the greatest difference that would be practicable in a title page of two volumes covering the Illinois decision for the same period.

Objected to as not responsive.

Q. Were those little pages prepared by you in manuscript?

A. Some of them were. I don't know whether all of them were or not. My judgment would be that they were all manuscript.

Q. How did you prepare the tables of cases?

A. In the table of cases that I prepared I adopted the system of arranging the titles according to the first letter only of the

977 name that was used, while Mr. Freeman, I think, had adopted the system of arranging them according to the order of the first three letters in the name, and by indexing them in the table of cases with reference to the first letter in them I was able to preserve the letters in the same order in which the cases appeared in the book

with reference to the consecutive paging. That made a difference which applied to the different tables of cases which I prepared. I wouldn't be certain, however, whether that applies to 41 or 42, and I think I had nothing to do with the table of cases in 43. (Witness refers to book.) The titles to 41 and 42 are prepared on the system that I refer to; prepared in the manuscript and the cases arranged in a different order.

Q. How did you prepare the foot-notes of these different volumes that were made by you?

A. Those mostly related to the law involved in the case and are in the main a citation of analogous cases, and some of them were prepared in the Chicago library here or Law Institute; some at my own house, probably; some while I was stopping in Brooklyn; most of them, however, in the libraries of the supreme court at Mt. Vernon, Springfield, and Ottawa.

Q. While you was examining the records and doing the other work, as you testified?

A. Yes, sir; two or three of them I prepared in the law library in the city of New York.

977½ Q. In volume 39, on page 24, it is claimed by complainant that there is a mistake in defendants' volume in spelling the name of the appellee Boyd, complainant insisting that the real name is Boyce. I find that in the defendants' volume it is spelt Boyd at page 24 and in the index in one place Boyd and in another Boyce. What is the fact as to that name as it appears in the original record?

A. At the time of examining the record I concluded that the proper name, as it appeared in the record, was Boyd, and I made the change as a correction.

Q. State whether you have any portion of the record in that case.

A. I hold in my hand a portion—propably the whole—of the abstract of the record forwarded to me from the file by the clerk of the court, and in this abstract it appears as Boyd.

The abstract in question is offered in evidence and marked Exhibit A to the deposition of Mr. Denslow.

My recollection is—and it is strenghened by the certificate from the clerk of the court to the same—that not only this abstract of the record, but that all of the other papers on file in the case have the name Boyd instead of Boyce, and I think that the error crept into Mr. Freeman's book through the imperfect reading of the name in the opinion (referring to volume 39). It is one of Breeze's opinions, and I left it Boyce in the body of the opinion because I thought that Breeze had written it Boyce instead of Boyd by an error.

978 Q. It is claimed by the complainant that in the case of Chinuquy *vs.* The Catholic Bishop of Chicago, volume 41, page 148, in defendants' edition, in the statements of the facts of the case at page 149, a mistake occurs in spelling the name "Pierie Merais;" that the correct name is "Pierre," and that you have followed Mr. Freeman's mistake in writing it Pierie. What is the fact, as appears of record, as to that name?

A. In the briefs of both sides it is printed Pierie, and I first obtained from the clerk a certificate of the condition of the name in the record file, and afterwards, when at Ottawa, I verified the clerk's statement by comparison with the record of the case, and would prefer, therefore, to state in his language the condition of the record "the first name of Merais." I read now from the certificate of the clerk of the court to refresh my own recollection. I have compared this with the record since this was made.

Objected to.

The first name of Morais is spelled in the briefs Pirie Morais and in the original record the first name could be taken as spelled Pierie or Pierre; it being in writing as placed in the record, the name looks as though it was spelled Pierre, while in other places it looks as though it was spelled Pierie, written with only one dot for the "i," which is midway between the two "e's" and over the "r."

979 Objected to because this was read by the witness from a paper which is not put in evidence after the objection to the paper was made.

Q. Have you yourself recently examined the record in that case; and, if so, with what result?

A. I examined the record and inspected the name in a good many places. The record is pretty long and the name occurs repeatedly, and I found this statement to be very fair and correct.

Q. This statement of the clerk from which you have read?

A. Yes, sir.

Q. Did you find from an examination that the name was spelled in both ways, but in some instances spelled so you could not distinguish in which way it was intended?

A. I think it was spelled in the record in the three ways, but I wouldn't be certain that there was any case of the straight spelling of Pierre in the record.

Q. It might be straight from reading—you mean from the handwriting?

A. There are some places in which a person, if he knew that that were correct, would be likely to accept that as the name; there are a good many places in the written record in which it looks much more like Pierie.

Q. When did you examine the record on that point?

A. About two weeks ago.

Adjourned to 2.30 p. m. to-day, and then adjourned to 3 p. m. next Monday, Oct. 24th.

980 EXHIBIT A.

Abstract.

In Supreme Court, 1st Grand Division, in the State of Illinois.

WILLIAM F. RANEY *vs.* CHARLES BOYD and JOHN S. HARVEY.

Error to Richland county.

1 page. Receipt for amount, directed to Marion county for money.
2 & 3. Copy of summons.
4, 5, & 6. Declaration; 1st count, special on an instrument in writing, in these words:

"OLNEY, ILLINOIS, *April 14th*, 1865.

"Received of William F. Rainey, of T. 2, R. 4, of Jefferson county, Ills., the sum of five hundred and twenty-five dollars in full for a substitute to be furnished, and the said substitute to be a clearance in his stead.

"C. BOYD.
"J. C. HARVEY."

Declaration in assumpsit in instrument and breach that defendants did not present a substitute. The usual common counts; count stated; money count; money had and received by defendants for the use of the plaintiff; count for work and labor, care and diligent.

Pleas filed by the defendants' general issue, &c. 2d and 3d pleas amount to the general issue.

981 4th plea. Defendants' alledge that they did furnish a substitute for the plaintiff on the 14th day of April, 1865, for the purpose of being mustered into the service of the United States for the plaintiff, but was not received and mustered into service because the plaintiff was released by the provost marshal from his liability as a drafted man; that they are still ready to furnish substitute.

Replication to 2d and 3d pleas; general traverse; demurrer to the 4th plea; demurrer overruled and plaintiff excepted at the time; plea traversed and trial — the court, and judgment for the defendants for costs.

Bill of Exceptions.

Plaintiff introduced in evidence the instrument in writing recited in this abstract.

For plaintiff, Henry Marshall, a witness, was introduced, who testifies that plaintiff was a drafted man from Jefferson county and held to service on the 5th of April, 1865; that on the 11th of April plaintiff received a furlough for five days; that on the 14th of April defendant- came to the office of the provost marshal and said *he* had a substitute for plaintiff and was told that it was too late to examine him that evening; that on the morning of the 15th of April an order

was received at the office to stop drafting; witness was a clerk in the office of provost marshal and produced order of ass't pro. marshal gen. at Springfield, Ills., dated April 14th, 1865, directing the drafting to be discontinued, and that in consequence of said order no more drafting was done and no more substitutes were received;
982 that after the receipt of said order defendants came again and said they had a substitute for plaintiff, but were informed that no more substitutes would be received; that the defendants never did furnish a substitute that was received for the plaintiff.

Plaintiff introduced Frank Powers, a clerk in the office of provost marshal, as a witness, who testified to the same facts substantially that Newhall did.

Defendants introduced Peter McDonald as witness, who testifies that defendants came on the evening of the 14th with a substitute to put for pl't'ff; Dr. Haynie, the surgeon, was out and the substitute was not examined; they came next morning and offered substitute, but was told no more substitutes would be received in consequence of an order to stop drafting from the pro. mar. gen.'s office.

Pl't'ff left Olney on the 14th of April, on the 6 o'clock train, and told witness that defendants would furnish a substitute for him; he had left his business with them; witness was asked by the counsel for pl't'ff if it was not known and discussed in the office of the pro. mar. on the 14th day of April, 1865, that the draft was suspended, and that no more drafted men or substitutes would be received after that day?

To the asking of which questions defendants excepted, and the objection was sustained by the court, and the pl't'ff at the time excepted to the ruling of the court. Witness knew on the evening of the 14th of April that drafting had been suspended.

983 Pl't'ff then introduced McClerkin as a witness, who testified that defendants hired him to be a substitute for some drafted man. The name of Ramy was mentioned at the time. The papers were made out immediately; the contract with defendant- was conditional that he would pass examination and be received on the evening of the 14th and morning of the 15th April. He went to the office of Mr. Marshal for the purpose of being examined, but was not examined or received as a substitute; still holds himself ready on his contract with defendants to go as a substitute. Defendants have expended about $20.00 in paying expenses of witness.

Witness then showed his papers, which had been made out on the 15th day of April, 1865, and an application to volunteer, and the indorsements on the same. Witness signed the papers on the date thereof, which was the 15th of April, 1865. This was all the evidence in the cause, and the court found the issues for the defendants; to which finding of the court and the rendering of judgment thereon the plaintiff, by his counsel, excepted.

Record of the court.—Demurrer to 4th plea and demurrer overruled, and plaintiff at the time excepted. Cause heard by the court and judgment for the defendants for costs now in arrest and for new trial. Motions overruled and prayed.

Errors assigned.—The court excluded proper and admitted improper testimony.

984 The finding of the court was contrary to the law and evidence.

The court erred in refusing motion for new trial lies over.

The court erred in refusing demurrer to 4th plea.

Brief.—1st. The transaction disclosed in the record was in the nature of a contract.

2nd. The deposit of the money with defendants in error was an executed contract on the part of the plaintiff in error, and an executory contract on the part of the defendants in errors.

(Endorsed:) Filed Nov. 9, 1865. N. Johnston, cl'k.

985 OCTOBER 27TH, 1881—3 o'clock p. m.

The direct examination of Mr. V. B. DENSLOW was resumed by Mr. HIGH, as follows:

Q. In the case of Derringer *vs.* McConnell, in volume 41, at page 228, it is claimed by the complainant that a mistake occurs in your volume in describing the land sued for as the southeast quarter of section 23. What are the facts in regard to the opinion of the supreme court concerning that description?

Objected to, as the record will show for itself.

A. I have examined the records of the supreme court since this examination began, and find that the statement of the description of the land in controversy is erroneous in the opinion of the court, and is correctly stated by both Mr. Freeman and myself in the statement of facts.

Q. How have you and Mr. Freeman stated it in the statement of facts?

A. I believe Mr. Freeman and I have both stated it as the southeast quarter.

Q. Southeast quarter?

A. Southeast quarter; and the opinion of the court states it the northeast. The record shows that it is the southeast.

Q. And the opinion states it how?

A. The northeast.

Q. So that you made no change in the opinion from the opinion as recorded?

A. I left the opinion as written.

Q. What was your rule in that regard, always?

986 A. My rule was to print the opinion as written and to make my own statement according to the facts.

Q. Do you mean to be understood that both you and Mr. Freeman had the description S. E. for the southeast quarter, as it appears of record, and that the judge had it different in the record by putting N. E.—northeast quarter?

A. Yes. I presume Mr. Freeman got the information from the same source that I did. I noticed the discrepancy as I went through the volume.

Q. In the case of Heartrumft *vs.* Daniels, volume 43, page 369, it is claimed by complainant that you have made a mistake in spelling the name of Heartrumft. How is that name spelt in the record of the case in the supreme court at Ottawa?

A. The prevailing mode of spelling is Heart, but in copying the signature to the bill for the purposes of the record it is Hart. In the original signature that I saw of Mr. Heartrumft it was written Heart, and on most of the occasions in which it appears in the case, according to my examination, it is Heart, and I consider that the proper mode of spelling it, judging solely from the record.

Q. Is it spelt more frequently in the record Heart than Hart?

A. Much more frequently, in my judgment.

Q. In the case of Elston *vs.* Kennicutt, volume 46, page
987 207, it is claimed by complainant that the paragraph beginning, "And this case was again brought before this court at the September term, 1868, upon a petition for rehearing," etc., is copied in your volume from the volume of Mr. Freeman. What have you to say upon that point?

A. That sentence I found written upon a sheet attached to the opinion and I made use of it as I found it.

Q. Attached to the opinion on file?

A. On file.

Q. In Ottawa?

A. Yes, at Ottawa. Sometimes the statement of facts was prepared by the judge and attached to the opinion, and wherever I found matter prepared by the court or adopted by the court I regarded it as open to use by myself.

Q. Have you any interest in any of these volumes embraced in the supplemental bill?

A. No pecuniary interest.

Q. How did you do the work, in regard to compensation?

A. At a salary, which has been paid.

Q. So that you have no further interest in the book or copyright?

A. No pecuniary interest.

Q. Have you any interest other than that of an editor in the editorial work that was done?

A. No, except professional pride in a work that cost me a good deal of intellectual labor that causes me to feel disappointed at seeing it suppressed. I think I did some pretty good work.

Q. When was this work done by you?

988 A. Well, I was exclusively occupied upon it for a period running from February, inclusive, of a certain year to the following May or June. I had previously done a portion of the work, in relation to which I have testified, and I could not state without some reflection the years that were involved, but I judge that it began—this does not contain the date of publication—*that it began* in February of the year preceding the year named in the publication; I should say in February, 1876, and ended in May or June, 1877, but the dates may be one year later than that. It is either from February, 1876, to June, 1877, or from February, 1877, to June,

1878; something like sixteen months; from February of one year to June of the year ensuing.

Q. The original bill in this cause was filed in December, 1877, involving volumes 32 to 38. Refreshing your recollection by that fact, what would you say as to the years in which you did the work on the volumes in the supplemental bill?

Objected to on the ground that counsel informs witness as to dates and misinforms him as to what was involved in the bill, either of which are objectionable.

A. My impression is that the work began—that is, the exclusive work on my part began—early in the year following the December of which you speak.

Q. That would be early in the year following the filing of the original bill?

989 A. Yes.

Q. And continued to what time?

A. For about sixteen months from that time—from February of the one year to June of the year following.

Q. That is sixteen months exclusively employed on the volumes embraced in the supplemental bill, aside from what work you did on volumes 32 to 38?

A. Well, aside from that and also aside from a certain portion of the work, to wit, the preparation of syllabi and foot-notes in volumes 41 and 42.

Cross-examination by Mr. LE MOYNE:

Q. Your recollection is that you were engaged about sixteen months in preparing these volumes?

A. In finishing and preparing I was occupied exclusively upon this work about sixteen months; yes.

Q. On volumes 39 to 46?

A. Yes; on that portion of volumes 39 to 46 which remained to be done after the work done by myself upon 41 and 42, and by Mr. Ewell and North and by Judge Bailey.

Q. You have testified that the work that had been done in the way of preparing statement of facts, argument of counsel, and so on, by Judge Bailey and others was laid aside by you—omitted from the books as published. Why was that done?

A. In order that I might obtain from the records of the supreme court all the original information which these records would

990 furnish to a reporter.

Q. Why did you so obtain it after the volume had been partly printed?

A. Do you ask me for the motives inducing my employees to obtain it?

Q. I am asking you for your reason for laying aside matter which had been prepared and going to the records to get information over again. What was your motive—your reason for doing it?

A. Well, it was to earn my salary.

Q. Is that the only reason you know? Is it the only reason you can give?

A. If you ask me for my personal motive, that is the only reason I had.

Q. You know of no other reason for your doing it?

A. Well, that is a somewhat metaphysical question. If you have any other reason for being here except that you are employed to be here, then I will be able to tell you whether I had any other reason except that I was employed.

Q. Oh, no; my reason for being here would not enlighten you as to your reason; if you don't recollect that you had any other reason you can say it. If you had any reason you are asked to state it.

A. My reason was that that was the work which I was employed to do.

Q. Were you told how to do it?

A. In some respects I was, and in some respects the method of doing it was left to my judgment.

991 Q. Now, don't you know that that was done because it was supposed in that way the copyright of the complainant could be avoided; don't you know that?

A. If you mean by avoiding made void, which is the ordinary meaning of the word avoided, I never had the least hope that anything we could do would affect the complainant's copyright.

Q. Is that the only answer you can make to that question?

A. I am answering the question in the sense in which you asked it.

Q. Wasn't it in consequence of the filing of this bill that that was done?

A. That is a matter bearing upon the motives of Callahan & Co., of which it would be proper that you should inquire of them.

Q. I am not asking instructions of you as to the propriety of my questions; I am asking you as to your knowledge, and I want you to confine your answers to the question and not assume to tell me what is a proper question or not. Now, don't you know that it was in consequence of the filing of this bill?

A. That is asking me in relation to another man's motives and I have not inquired of that man what his motives were and I am not a competent witness to the point. I had nothing to do with determining the question whether the volume should be revised or not. I was not one of the parties interested in that point; all that

992 I did was to decide whether or not I would accept the opportunity offered of employment and perform it. The motives that lay behind Callahan & Company in proposing to do that didn't enter into my discussion or that of others with me.

Q. Now, can you answer the question as to whether or not you knew that this was done in consequence of the filing of that bill? I am asking you to state whether you knew it or not. If you knew, say so; and, if not, say that. I wish a simple answer to that question.

A. Speaking with the ordinary looseness of speech in which people assume that they know what they merely imagine I might say that

I knew it. Speaking with any degree of exactness the question relates to matters beyond the possibility of knowledge on my part, because it belongs to the workings of other persons' minds and not to my own.

Q. You have testified before in this case, haven't you?

A. I testified in connection with the hearing upon the original bill.

Q. You made an affidavit which was filed in this case, didn't you?

A. I believe I made an affidavit.

Q. Don't you know you did?

A. Whether it was filed or not I don't know.

Q. Don't you know you did?

A. I think I did.

993 Q. Don't you know that the work of preparing the other volumes which had been prepared before the bill was filed was done differently from the work done after the bill was filed?

A. Yes, sir.

Q. Did you go to any original record before the bill was filed for any part of the book that you superintended or edited, as you call it?

A. I did not.

Q. The work, then, that had been done by Judge Bailey and others, which you say you had laid aside, was done before this bill was filed, wasn't it?

A. Before the supplemental bill was filed?

Q. No; before the original bill in this case was filed.

A. That I don't know.

Q. You don't know whether it was or not?

A. No, sir.

Q. Had you done any work on these volumes from 39 to 46 before the original bill was filed in this court?

A. Yes, sir.

Q. You were, then, at work at the time the bill was filed on some of the volumes from 39 to 46, were you not?

A. I had been at work previously to my entrance upon this 16 months of exclusive work.

Q. How much work had you done prior to the filing of the original bill, and which volume was the work done on?

A. The filing of the original bill stands more clearly in your mind than it does in mine.

994 Q. You were served with process, weren't you, in the original bill?

A. I don't remember that I was. I think some statement was made that counsel would appear for me, and it may have been that I was served.

Q. Can you remember now how much work you had done on any one of these volumes up to that time?

A. The time when the process was served or when the supplemental bill was filed is not a period by which I can date anything.

Q. I didn't ask you anything about the supplemental bill.

A. Nor when the original bill was filed; neither of those are dates by which I can fix anything.

Q. Do you remember when you made that affidavit?

A. I have made two affidavits.

Q. The first affidavit you made in this case.

A. I don't remember the date now.

Q. Can you remember how much work was done up to that time on volumes 39 to 46?

A. As I have stated in my direct examination, the preparation of the syllabi and a considerable portion of the foot-notes of volumes 41 and 42 constitutes the work that I had done upon these seven volumes prior to the period of my exclusive appointment, and I presume that that was prior to the filing of the original bill.

Q. That is your best recollection, is it?

A. It is my presumption.

995 Q. Have you any recollection on the subject?

A. I don't recollect the date of the filing of the original bill.

Q. Didn't you, after the filing of the bill, pursue a different method of preparing the volumes, or did you follow the same method you had begun before?

A. Not knowing when the bill was filed it does not stand associated in my mind with that fact.

Q. Then you have no recollection that after the filing of the bill you changed the method of preparing the volume?

A. I say, not knowing when the bill was filed, it does not stand associated in my mind with that fact. Up to a certain period I was engaged in preparing, I think, four of those volumes under one set of instructions. After that period I entered upon the preparation of seven of them under another set of instructions. Now, the period at which I entered upon the preparation of the seven volumes I take to have been in February of 1878, probably, and you can adjust that with reference to the question whether it was after the filing of the original bill or not, according to the fact as the filing of the original bill is a fact within your knowledge.

Q. Now, did you after the filing of the bill, or if you remember it better by after the time when you received different instructions, did you in preparing the volumes use the work which you had prior to that time prepared?

996 A. I used all that portion of it which was not derivable from the records of the supreme court. The preparation of the syllabi and foot-notes would not be assisted at all by the records of the supreme court; or very slightly, indeed.

Q. I am not asking what you would be assisted in. I am asking you as a question of fact whether or not you used the work, if you remember. If you do not remember whether you used it or not say so. I am not asking your reasons for doing it. I am asking the question of fact as to whether you did use it.

A. Well, I am telling you as a matter of fact that I used part of it.

Q. Then you mean there was part of it you didn't use, do you?

A. Yes, sir.

Q. Now, what part was that?

A. That was the portion in which information was derivable from the records.

Q. Then you had done part of the work before this change made in your method of preparing the notes—you had then done part of the preparation of the work in getting the matter which appeared on the record; is that what you mean to say now?

A. I don't think your question is quite as you mean it.

Q. Prior to the time when you say you made a change in your method of preparing work I understand you now to say that you had prepared a portion of the work which you derived afterwards from the records, such as the statement of facts, the argument
997 of counsel, and orders of court. Now, do you mean that you had done part of that work on any of these volumes now in question prior to that time or not?

A. I hadn't done prior to that time any portion of the work which I afterwards did, of course. What I had done prior to that time was to abridge matter which had previously been prepared by the State reporter. What I did after that time as concerns the matter between the syllabus and the opinion was to reject the matter previously prepared by the State reporter and pay no further attention to it and to put in my own matter from the records.

Q. That was the part of the work which had been previously done which you laid aside; is that what you mean?

A. That was the portion of it. Then there was in addition the titles of the cases which came before the syllabus, and there was the revision and corrections of the opinions themselves, and perhaps some other work.

Q. In giving your direct testimony here is your recollection quite distinct as to how you prepared the books in question?

A. Was it distinct at the time I testified?

Q. Yes.

A. I think that it had as much distinctness as can ordinarily be expected in relation to matters occurring several years previously.

Q. Wasn't the work done in a way to impress itself on your mind forcibly as to the method in which the books were prepared
998 so that you would recollect it more distinctly than if there had been no controversy about the books—no bill filed?

A. Well, the controversy was one which I never investigated as to its legal merits nor had any interest in any way as the publisher did. With me it was a simple piece of legal and literary work. I had nothing to do with the controversy, so far as my own sense of interest and feeling in relation to the matter was concerned.

Q. My question is simply whether your recollection is now fresh in regard to it and whether you can remember distinctly how all the work was done by you.

A. A work involving so many details and occupying so long a time will necessarily include a great many general and comprehensive facts which my memory will adequately cover and a great many petty details upon which the extent and accuracy of my memory can

best be tested by cross-examination. If I come to any matters which I do not remember I will so state.

Q. Can you answer the question? I am not asking, speaking loosely, as some people do, of what your memory will cover; I am asking you if you now believe that your recollection is distinct in regard to the method in which this work was done or not. That is a simple question and I would like to have a plain answer, if that is possible.

A. I have stated that I think it is as distinct as matters occurring at such a distance of time usually are in the recollection of persons of good memory.

999 Q. Can you recollect now whether you read over all the opinions or not?

A. What opinions and what time do you refer to?

Q. All the opinions you have testified about in your direct examinations.

A. That is, in connection with the records?

Q. I understood you to testify that you had read over the opinions as filed?

A. Yes, sir.

Q. Do you remember now whether you did or not?

A. I believe that I read over every opinion contained in the seven volumes which I re-reported.

Q. I understood you to testify that you printed them from the opinions as filed, and that you made in Mr. Freeman's copy of the opinions the corrections necessary to make them correspond with the opinion as filed; did I understand you correctly in that regard?

A. Do you mean by my having testified that I printed them from the opinions as filed that I sent the original opinion as filed to the printer? That would be an erroneous conception on your part. I didn't testify to that. A person is said to print a thing from the copy when he sends that copy to the printer.

Q. I will try to make it so plain that even you can understand it. Did you have them printed exactly as filed—exact copies of the opinion as filed?

A. That is what I undertook to do.

1000 Q. Did you do it? I am not asking what you undertook to do; I am asking whether you did it or not.

A. The effort to do that constituted my work. In printing seven volumes, in view of the fact that printers' errors and various other infinites-mally small details are liable to interfere with the absolute correctness of the copy, neither Mr. Freeman nor myself nor any other man could swear to the literalness of his own copy, for even if we get second and third proofs from the printers and make corrections with a view of maintaining uniformity between the matter that was printed and the original opinions there would still be a possibility. As against everything but the ordinary possibilities of error I think that I printed the opinions as filed.

Q. Your effort, then, was to make them *verbatim* copies of the opinions as filed?

A. Yes, sir.

Q. You undertook to make no corrections in the opinions as filed or changes of any kind, did you?

A. That is, to improve the language of the judges?

Q. To make any changes whatever; did you undertake to make any, and, if so, what, changes in the opinions as filed?

A. Well, there would be certain small classes of changes which would be made.

Q. What were they? State what changes you did make, not what might have been made or would be made by somebody
1001 else, but what you did make.

A. Well, in using the word- "would be made" I correctly and advisedly use *it*, because in reporting an opinion there would be some changes in language that a reporter would have to use in order to make his work complete; as, for instance, where the court, in referring to a recent decision of its own, uses the terms, decided at such a term, May or September, as the case might be, it would be in accordance for the reporter, if the volume containing that decision had been published, to substitute there the volume and page of publication for the mention of the term.

Q. Did you do that?

A. I did that in some instances.

Q. Show one instance in which you did it; here are the books; now show one in the seven volumes. I challenge you to show one.

A. I haven't preserved any memoranda of facts of that kind, and while the instances that occur are several in every volume probably it wouldn't be possible for me to point out either of them.

Q. Now, mention any other changes that you made in the opinions as filed.

A. That is the only kind of change from the language of the judge that occurs to me at present.

Q. Then you didn't undertake to correct the grammar of the opinion?

A. No, sir.

1002 Q. You didn't undertake to revise the citations of authorities as given in the opinion, did you?

A. Well, in some cases that was done in the reading of the opinions.

Q. That is, you corrected them by the opinions themselves?

A. I corrected them by the library.

Q. Now, can you point out a single case where you did in these seven volumes before you?

A. I haven't preserved the memorandum in such cases as that.

Q. How long a time did you spend on each volume, can you testify?

A. It wouldn't be possible to measure and divide the time in that manner, because in the mode of doing the work I was at work upon all of the seven volumes at once, more or less.

Q. What volumes did you begin on?

A. In the course of my exclusive employment, as I have testified, I was at work upon 41 and 42 before making this an exclusive occupation.

Q. In the course of the labor which you performed on these books after the method of preparation was changed?

A. Well, the work spent upon the various volumes from the first. For instance, in going to the records at Springfield I would go through all of the Springfield — before leaving Springfield in the main; for two or three slight matters I had occasion to send there afterwards; then in going to Mt. Vernon I would examine for the seven volumes the cases at Mt. Vernon; then I concluded the work
1003 at Ottawa, except certain portions, which were done in Chicago and at Madison, Wisconsin.

Q. Do I understand you to mean that the work on all the volumes was finished about the same time; that you carried on the work on the seven volumes together, so that they were done at nearly the same time?

A. They were in course of preparation simultaneously, and I would frequently during the same day do more or less work upon three or four different volumes—that is, if you included examinations, writing, proof-reading, &c.

Q. Then I will understand from what you say that your work on the several volumes was carried on together, so that it was completed nearly at the same time?

A. Well, no, sir; the conclusion that the work was completed at the same time for the seven volumes would not apply.

Q. Well, then, which were completed first?

A. My impression is that 46 was completed first—that is, it issued from the printer first.

Q. Now, don't you know that 39, 42, 43, and 46 were all issued and offered for sale during 1878?

A. Well, no; I have no date by which I could say that I know that.

Q. When did you commence work at Springfield on these volumes?

A. In 1878 was the year of publication of the first of those volumes.

Q. Look at 39, or any of these volume before you that you
1004 see fit, and state whether it don't appear where they were published.

A. I judge from those volumes that my work at Springfield began about February, 1878.

Q. When did you finish there?

A. I had two seasons—two spells at Springfield.

Q. Can you answer the question when you finished at Springfield? If so, please state.

A. I was engaged at Springfield for about six weeks before going to Mt. Vernon, and I again stopped at Springfield after my return from Mt. Vernon, for how long I am not certain now, but I think for about two weeks.

Q. When did you begin work at Mt. Vernon, and when did you finish on these volumes?

A. I went to Mt. Vernon about the 1st of April, I think; it may have been about the 1st of May. I think my stay there was not longer than between two and three weeks.

Q. When did you begin work at Ottawa, and how long were you engaged on these volumes there?

A. Immediately on my return from my second period of work at Springfield I went to Ottawa and continued there until, I should say, about the 1st of January, although I have no precise data concerning these dates, except that the work in one place followed the other without intermission.

Q. Look at the paper now shown you and state what it is.

A. This purports to be a copy of an opinion in the case of Moses *vs.* Carter.

Q. It is a certified copy, isn't it?

1005 A. It seems to be.

Q. Does that opinion appear in the book as prepared by you?

A. I have not had an opportunity of comparing the opinion all the way through.

Q. Doesn't an opinion appear in your book which purports to be the opinion on the petition for a rehearing in the same case?

A. There is an opinion in my book in the same cause which purports to be the opinion filed, and also an opinion which purports to be the opinion as recorded, but the opinion which I published seems to omit the concluding clause of this certified opinion, and I doubt the propriety of that clause being in the certified copy of the opinion. As I state, in publishing the recorded opinion that this concluding clause is an indorsement upon the opinion, and I suppose therefore that I took it to be an indorsement upon the opinion, not designed to be a part of the opinion, and therefore did not publish it as part of the opinion.

Q. Have you any other explanation to make in regard to the change in the opinion? If so, make it now.

A. If there is another point upon which you want an explanation please ask it now.

Q. Please examine the opinion as published by you and the opinion as published by Mr. Freeman, and state whether they correspond and whether one is not a *verbatim* copy of the other. You needn't examine the written opinion now. I am asking you to com-

1006 pare your printed opinion with the one printed in Mr. Freeman's book, and state whether one is not a *verbatim* copy and the other not.

A. On a single reading I discover two differences.

Q. Specify them.

A. One in the use of the word "rule" after the words "common law," in the fifteenth line from the bottom of the 554th page. The other in the use of the word "say" instead of "says," in the 23rd line from the bottom of 556.

Q. Now, compare the certified copy of the opinion with the opinion as published by you, and state whether your published opinion corresponds with the certified copy or not.

A. It does not correspond with this thing which purports to be a certified copy.

Q. Can you give any explanation of the differences between the two? If so, please do it.

A. In one difference I take it that the certified copy is incorrect—that is, in including this last clause as a clause in the opinion instead of as an indorsement. The clerk has exercised a different judgment in relation to it from what I did. I regard it as an indorsement upon the opinion and not as a part of the opinion, and as an indorsement intended not for publication but for the instruction of anybody who should examine the records.

Q. Have you any other answer to make to this question? If so, we are waiting for it.

A. I should have to compare this certified copy and the two published opinions, none of which agree with each other in all
1007 respects, with the manuscript of the court on file in order to be able to state why Freeman read the opinion in one way, I in another, and the clerk who made this certified copy in a third and a different way from either of us.

Q. Then after such examination you cannot now explain the dissimilarity between the opinion as certified to by the clerk and your published opinion?

A. I could merely make some general suggestions which would tend to explain how two parties going to the files for a copy of the opinion, and even two clerks attempting to certify a copy of the opinion, might certify it differently or obtain it differently, both having the same materials before them; but those suggestions would be of a general character and might or might not apply to this specific case.

Q. Do you mean, then, that you have no recollection of this present case?

A. I do not.

Q. Have you any recollection about this present case?

A. I have.

Q. Then can you state from that recollection that the opinion as certified by the clerk is not as published by you? I am not asking how it might have been, I am asking you if you recollect how it really was; and, if so, state.

A. How the clerk comes to certify a different opinion from the opinion published by me?

Q. No; how you came to publish a different opinion from the one certified to by the clerk?

1008 A. The clerk's certificate was not before me at the time I obtained my copy, and I had no opportunity of making my copy agree with his certificate.

Q. It is not the clerk's certificate that I am referring to; it is a copy.

A. Well, I say the clerk's copy was not before me when I made my copy and I had no opportunity to make my copy agree with his—that is, if I desired to. I don't know that I should have desired to do so if I had had his copy before me.

Q. You mean, then, that you published the opinion as it was on file at that time?

A. That was the effort on my part.

Q. And your recollection that the effort was successful or not, which?

A. I certainly regarded it at the time as successful.

Q. And did you correct the proof of these opinions as they were printed?

A. I did all the correction of proof that was done.

Q. By anybody?

A. Or I supervised it.

Adjourned to 9 o'clock a. m., to-morrow morning.

OCTOBER 27, 1881—9 o'clock a. m.

The cross-examination of V. B. DENSLOW was resumed by Mr. LE MOYNE as follows:

1009 Q. Please look at volume 41, as prepared by you, at page 359, last paragraph on that page, and state whether it is a *verbatim* copy of the paragraph in Mr. Freeman's 41st, or if there is a difference in that paragraph state what it is.

A. They seem to be alike.

Q. Isn't one a *verbatim* copy of the other?

A. I think so.

Q. Now, look at the paper shown you and state what that is.

A. This purports to be a certified copy of the opinions as recorded in the office of the clerk of the supreme court.

Q. In the same case?

A. Well, one is marked Clark *vs.* Gratiol and the other Child *vs.* Gratiol.

Q. Which one is marked Clark?

A. The certified copy of the opinion as recorded seems to be Sullivan S. Clark instead of Sullivan S. Child.

Q. What is it in Freeman's book?

A. Sullivan S. Child. I would say that this purports to be a copy of the opinion of record, but I very soon learned in the course of this business that the records of the opinions were not to be trusted at all. A person would only have to work at the business for twenty-four hours to discover that.

Mr. HIGH: Do you mean by the record opinions, the opinions as recorded or copied by the clerk into the books of records?

1010 A. Yes; the opinions as copied by the clerk into the books of records are full of incorrect matter; that arises from two reasons: In the first place, the carelessness with which the opinions are transcribed, with which the writing is done when the written opinions are transcribed into the books; and, in the second place, from the fact that, as I have been told by the State reporter (objected to)—from the fact that it appears on face of many of the manuscript opinions filed that the opinions have been changed by the judges subsequently to their being recorded; and while they are in the hands of the reporter, frequently at the suggestion of the reporter, —

would introduce change of substance, interlineations, endeavoring to reconcile the opinion with antecedent opinions of the court, and sometimes make variations of a good many lines, amounting to a recasting of whole paragraphs of the opinion.

Q. Well, did you publish them as you found them recorded or as they had been changed by the reporter?

A. After discovering the fact in relation to the condition of the records I undertook in all cases where possible to obtain the original opinion.

Mr. HIGH: You mean the manuscript opinion, as filed by the judge?

A. As filed; and at Springfield, in particular, finding that a great many opinions did not seem to be on file, I waited upon the State reporter several times, and in consequence of my interviews with him a large mass of these opinions—several bushels of them,
1011 I should judge—were returned to the office of the clerk of the supreme court.

Q. By whom?

A. By the State reporter, Mr. Freeman.

Q. Now, look at the paragraph in the certified copy produced, beginning with the words "the spirit of this law," and state whether the opinion as published by you corresponds with the copy of the opinion as published by Mr. Freeman or with the opinion as shown in the certified copy.

A. Well, in the certified copy I find that the word "fiduciary office" exists where in the printed opinion the word "trust" exists.

Q. In the printed opinion?

A. The printed opinion. Then after the words in the printed opinion "there is an incongruity in it which cannot be reconciled," there appears in the certified copy of the opinion, as recorded, "on any principle of which we are advised." From my experience in these matters I should have no doubt, although it would be a matter of judgment, that this change was made by the judge after the opinion was recorded, and that the opinion, as filed, would be found to agree with both Freeman's copy and mine.

Q. When you say matter of judgment you mean matter of conjecture, don't you; you have no recollection on the subject?

A. It is not a matter of conjecture, because I have the evidence of similar cases, and a good many of them, and I know the habit and practice of the judges in that respect. I would say, explana-
1012 tory of this last feature, that neither——

Objected to.

Q. When I ask for any particular point it will be proper for you to answer. I wish you now to look at a case in the same volume, page 410.

Witness insists that he desires to make some further explanation and continues:

In continuation of my answer I would state that on the title page of this volume it is not stated that the opinion as published is a

copy of the opinion as recorded, and therefore the correctness of the opinion does not depend upon its agreeing with the opinion as recorded. What is stated on the title page of this volume is that it is reported from the records of the case and the original opinions on file in the office of the clerk of the supreme court, and this certified copy does not purport to be a copy of the original opinion on file, but of the opinion of record.

Q. Have you any further answer to make?

A. I believe that covers the question.

Q. To prevent future misunderstanding I wish to call your attention to the fact that I have not asked you anything about what your title page purports to furnish nor for what your book purports to furnish, or for any explanation as to what the certified copy of the supreme court purports to be. My question is simply whether you can trace a similarity between your copy and Freeman's or the certified copy produced and your copy. I have not asked for
1013 any conjectures or explanations about your book, and ask that you confine your answers to the question.

A. And to prevent future misunderstanding I wish to state——

Q. Now, I ask you the question whether or not that certified copy corresponds with yours as published, or whether it corresponds with Freeman's as published.

A. — that your question has always been fully understood the first time without the necessity of repetition.

Q. Then I ask that it shall be answered, and shall insist on that, however embarrassing it may be.

A. And I shall exercise the right of answering it in the same spirit as you ask it, however embarrassing it may be to you to have it answered in that way.

Q. Now, will you turn to page 413 of the same volume and compare in Freeman's book the paragraph beginning with the words "and appear before the others" and state whether the book as prepared by you in that paragraph corresponds? Or, if there is a difference, state what it is.

A. They seem to me to be alike.

Q. Well, one is a *verbatim* copy of the other, isn't it?

A. I think so.

Q. Have you any recollection of any change being made in the opinion in that case?

1014 A. It was not my habit, after discovering that the recorded opinion was not trustworthy, to compare in every case the opinion so filed with the opinion as recorded, and without such comparison I would simply have followed the opinion as filed very likely without discovering, in a great many cases, that it had been departed from in the record, so that I do not claim to have had knowledge even at the time, still less to remember at the present time all the instances in which the record departed from the opinion as filed.

Q. I have not asked you what you claimed.

Question read.

A. And this is one of the instances in which I do not recollect having compared the record with the opinion.

Q. Have you any recollection of comparing Mr. Freeman's copy of the opinion with the opinion as filed? Do you now remember that you made any such comparison of this case?

A. I compared Mr. Freeman's copy of the opinion before sending it to the printer and for the purpose of correction with the opinion as filed, if it could be found, and if not then with the opinion as recorded. I think that the instances in which the opinions at Ottawa could not be found were very few indeed, and I think, therefore, that it must have been compared with the opinion as filed.

Q. Do you mean, then, that you believe you compared it because such was your habit, or do you mean that you recollect now
1015 that you compared this particular case, and that the opinion was found or was not found?

A. The former of your two hypotheses is correct.

Q. That is, you believe so because such is your habit; you have no recollection of it now?

A. I have no specific recollection in the case of each, there being 1,200 opinions involved in the seven volumes.

Q. State from what source you obtained the information contained in the notes, after the order of reversal, that Mr. Justice Lawrence did not hear the argument in this case and took no part in the decision.

A. There are generally indorsements upon the opinions indicating facts of that character, and I can only state that from the general rule. I think that that language would be found indorsed on the opinion.

Q. Do you mean that from your experience you infer it would or that you have a recollection of the fact that it was?

A. I have no specific recollection in any particular case on that point, but the general rule was that indorsements were made upon the opinions, if from any cause a particular judge wished to relieve himself from the inference that he had participated in the opinion.

Q. Look at volume 39, page 456, and give the title of the cause as published by Freeman and by you.

A. They differ only in substituting the name of Allen for Allan. James M. Allen it is in Freeman, and in mine it is Allan.
1016 I believe that is the only substantial difference.

Q. Have you any recollection as to where you got the title of that cause?

A. No specific recollection. I do not feel any doubt that I got it from the record. There were frequently cases in which changes in the title were necessary.

Q. Did you compare the title as published by Freeman with the record?

A. I do not feel any doubt that I did.

Q. Have you any recollection now of any change being made in the title of that cause in the record as published by Mr. Freeman?

A. No, sir.

Q. In the same case look at page 459 of Freeman's and 460 of

yours. At the end of the paragraph you say, "Observe session laws 61, page 243." Have you any recollection of where you got that reference?

A. I have no specific recollection of it. I would say in relation to that question that it assumes that I did get it. I don't know as I got it at all. I should take it for granted that it occurred in the opinion of Judge Walker as he wrote it and that he got it.

Q. Supposing that it should not appear in the opinion, what would your recollection then be?

A. I should wait until I discovered that before I undertook to account for it.

Q. Have you any recollection of any changes made in the opinion in that case as published by Mr. Freeman from the
1017 opinion as filed?

A. Of any chaages made in the opinion as published by Mr. Freeman and in the opinion as filed?

Q. From the opinion as filed.

A. Well, I have not spoken of any changes being made by Mr. Freeman from the opinion as filed, but from the opinion as recorded. I think that with the exception of the changes of the words "among" and "while," or "amongst" and "whilst," Mr. Freeman's opinions, subject to printers' errors, usually correspond with the opinion as filed.

Q. I am not asking you for what you have spoken of. I am asking you if you have any recollection of any changes made from the opinion as filed by Mr. Freeman in this particular case.

A. I don't know that Mr. Freeman filed any opinions.

Q. Last question read.

A. I have none.

Q. Have you any recollection of any changes made by you from the opinon as filed in this case?

A. I don't think of any.

Q. Look at volume 44, page 187; compare the third paragraph from the top of the page, beginning, "On these facts the court instructed the jury"—compare that paragraph with the corresponding paragraph in Mr. Freeman's volume and state whether one is a *verbatim* copy of the other.

1018 A. I should judge they were alike.

Q. One is a *verbatim* copy of the other, isn't it.

A. I think so.

Q. Have you any recollection of any changes in this case from the opinion as filed in the opinion as published by Mr. Freeman?

A. I have no recollection of any changes in any case except those which I have stated.

Q. Do you mean by that in any of the cases in any of the volumes?

A. Except of the two classes I have stated that have reference to authorities, misprints, and certain verbal changes. In other words, the imputation that is contained in your question is that I have somewhere charged Mr. Freeman with varying from the opinion as filed. I wish it to be understood that I have not. I have simply

stated that both he and I vary from the opinion as recorded, and consequently there is an implication in your question which is unjust. It is not a variance from the opinions as filed that we are talking about, but from opinions as recorded, and I would further say in continuance of this line of investigation that at the outset of this business Messrs. Callahan & Co. suggested the obtaining of certified copies of opinions from the records certified by the clerk, and that I instructed them that a volume consisting of copies from the record would be absolutely worthless, and that the opinions couldn't be correctly reported in that way.

1019 Q. You testified that the matter between the syllabus and the opinion was prepared in manuscript and sent in manuscript to the printer; is that so in all cases?

A. In most instances.

Q. Were there some instances in which it was sent as printed?

A. There were some instances in which some printed matter was used; no instance in which it was sent as printed.

Q. From whence was that printed matter taken?

A. As I stated on a previous examination, where there appeared contracts, documents, in some instances long statutes or ordinances, and possibly in one or two instances pleadings that covered several pages, I did, to save copying, compare the copy published by Freeman with the copy on file, and after correcting that included it in my manuscript as the document itself was published, probably, and the mode in which I obtained a copy of it is immaterial.

Q. That is your opinion?

A. That is the fact.

Q. Did you on the matter furnished by you which was to be inserted between the opinion and the syllabus indicate the paging of Freeman's book?

A. If it were not stricken out by me or if stricken out the printer failed to follow the copy correctly; in either case it would have been retained.

1020 Q. Did you strike it out as a general rule or did you retain it?

A. I don't remember.

Q. Have you any recollection of striking it out in any case?

A. I have no recollection of striking it out.

Q. Have you any recollection of inserting it in any case?

A. I have not.

Q. You have no recollection about it either way, then?

A. My impression is that the paging was left in some cases.

Q. You say that is your impression. Is that impression derived from a subsequent examination of the volumes—that is, subsequent to their publication?

A. I have never examined the volumes with reference to that question.

Q. Who determined that arrangement of these volumes, the matter to be included in them, the amount of matter they were to contain, and the order in which the cases were to be inserted?

A. My instructions from Callahan & Co. were to report the cases in the same order, to preserve in the margin Freeman's top paging, so far as the matter was the same, so that the marginal paging should form an index to the mode in which it was paged by the State reporter, and my own paging at the top should be according to the actual paging of the book.

1021 Q. Is it not true that in making up each of the books for Callahan & Co. a copy of Freeman's book was cut up and used in the preparation?

A. Allow me to state. I should have said my own paging at the bottom should correspond with the actual paging of the book.

Q. Question read.

A. It was cut up and portions of it were used.

Q. In the preparation of these volumes for Callahan & Co. did you make any comparison between the briefs of counsel as published by Freeman with the briefs as filed; if so, to what extent?

A. I glanced at them sufficiently to perceive whether they were extracts from the briefs as filed or condensations generally.

Q. In either case did you use them as published by Freeman?

A. No, sir.

Q. Where they were extracts did you use them as published by Freeman; I mean did you use Freeman's publication of them where you found them to be extracts from the briefs?

A. I don't think I did.

Q. What was the object in making a comparison—to see whether they were extracts or condensations?

A. I was — interested from the beginning to the end of the work in the study of the mode in which Mr. Freeman had reported

1022 the cases as I was in the study of the mode in which the judges had decided the cases.

Q. Then do you mean that you examined these merely as a matter of curiosity and not for use in preparing the books for Callahan & Co.; is that what you mean?

A. Well, my object was to make as much better a report of the cases than Freeman had made, if possible, as it was in my power to make, and if I saw any means to make a better volume in a commercial point of view by including materials which Freeman had not I availed myself of it to the utmost extent.

Q. You availed yourself, you mean, of Freeman's volume?

A. I availed myself of the opportunity to make a better volume from the letters, files, &c., from the materials at my disposal to the utmost extent.

Q. Is it not true that throughout your volume the principal change in the arguments of counsel is the abbreviation and shortening of the arguments?

A. As published by Freeman?

Q. As published by you.

A. No, sir; that is not at all true.

Q. Have you enlarged them?

A. I have published a great many arguments that Freeman has

not published at all. Where Freeman published anything of the argument of counsel he generally cut an extract from the
1023 argument whole so far as it went, and very seldom condensed the whole brief into a short space. I, on the contrary, with the exception of a few instances at Mt. Vernon, nearly always undertook to condense the entire brief, saving all the authorities, and to state the substance of the brief in the least possible compass, which is a much more laborious work than that which Freeman performed in that connection.

Q. In preparing these volumes didn't you have Freeman's copy of the same volume before you all the time?

A. Not all the time, by any means. When I was obtaining copies of the opinions, or when any document as I have spoken of arose, I would need Freeman's volume; when I was examining the records of these cases I would not.

Q. Now, do you swear that you did not copy any of the arguments of counsel and the citation of authorities from Freeman's book?

A. I don't think I did.

Q. Can you swear you did not?

A. Whatever I say I swear.

Q. You say you don't think you did?

A. Yes, sir.

Q. Don't you know whether you did or not?

A. In no instance did I derive my authority for the publication or for using any portion of the briefs of counsel from Freeman. In all cases I derived it from my examination of the records. If any use was made of Freeman it was a mechanical use to save
1024 copying what I found spread out in the files and records in a form which entitled me to copy it.

Q. Do you mean that after examining the records you supposed that you were entitled to copy from Freeman's book what he had copied from the record?

A. No, sir.

Q. When you say that you were entitled to take it from Freeman's book how did you acquire the right to take it?

A. What does your word take include? Entitled to take what from Freeman's book?

Q. The material which is described in the former question, to wit, the arguments of counsel and citation of authorities. You said you acquired your right to take it from Freeman's book, or that you became entlitled. The question that I am now asking is how you became entitled to take it from Freeman's book at all?

A. I have not said that I became entitled to take it from Freeman's book. The argument of counsel and the citation of authority were not in any case taken or printed from Freeman's book. The matter that was taken from Freeman's book, as I said before, consisted of documents, pleadings, contracts, &c., that were not Freeman's, but the records, and for the purpose of making copies of those I might use the published copies in Freeman. The document being on record, it was public property; and, as I said before,
1025 whether I based my copy on a copy that appeared in a news-

paper or in my own handwriting or in Freeman's volume made no difference as long as it was a document. Now, when you come to the arguments of counsel, those, I say, were condensed in my own language, and the citation of authorities were written in my own hand and were furnished in manuscript to the printer.

Q. I am not asking you what you might have done, but what you did. I am not asking you your opinion as to what you had a right to do. I am asking what was in fact done.

A. I am not going to swear that in all cases where these documents existed I did use Freeman's copies; I am only going to swear that I might have used them.

Q. But you do recollect that in no cases did you use his statement as to the argument of counsel and citation of authorities?

A. Yes, sir.

Q. That you swear to?

A. Yes, sir; that is according to my best recollection.

Q. You have testified that the syllabi of volumes 41 and 42 were prepared before going to the record, and afterwards revised in the light of the record; what advantage did the record furnish in preparing the syllabi of cases?

A. These advantages—that in many instances the judge of the supreme court in writing his opinions would, in my judg-
1026 ment, not present a full statement of that side of the controversy against which he was rendering his decision, while the briefs of the counsel of the defeated party and in some instances the pleadings and even the evidence would present a much fuller statement of the position taken in the case, both on the law and facts, by the defeated party. My theory was that until the full strength of the position taken by the defeated party was fully stated a candid and correct statement of the decision of the court could not be made. Therefore by looking over the files and reading the briefs of the party that was beaten I could in some instances develop a fuller statement of the actual decision made by the court than from the opinion of the court alone.

Q. How many of the syllabi were rewritten there after examining the records and counsel's briefs?

A. I could only tell that by an examination of the books, which would occupy some little time.

Q. Can you tell approximately; were there many or few?

A. Well, the words many and few have no definiteness. I couldn't give any information on that point until I had myself acquired it.

Q. You have stated in your direct examination that some changes were made by Mr. Freeman in the opinion, which you corrected, and you said there were some corrections which were corrections
1027 of substance. Can you point out any one in all these volumes?

A. I wish very much that I could, for some of them were quite important and valuable.

Q. Well, can you—that is the question?

A. I preserved no record of them.

Q. With the books now before you, you can't point out a single instance in which you made such a change?

A. I couldn't without a great many hours of search.

Q. Weren't the title pages of Freeman's books sent to the printer for your book with the alterations written on them?

A. Some of them might have been. My recollection is not distinct in that respect as to whether new title pages were written in all cases or not.

Q. Who prepared the table of cases of volume 39?

A. I should think that I did.

Q. Who prepared the table of cases for 43?

A. I think Mr. North did. I don't think that I had anything to do with it.

Q. Is that the system of arranging the cases in the table as described by you in your direct examination?

A. Not in the mode described as being my system.

Q. That is the Freeman system, isn't it?

A. I should think that they were arranged here according to the first three letters of the word to be indexed.

Q. You say you had assistants?

1028 A. Yes; assistants making comparison of the opinions.

Q. Who were those assistants; who was the assistant at Ottawa?

A. There were three different persons at Ottawa, another at Springfield, and another at Mt. Vernon.

Q. Name them, please.

A. I don't remember the names of two of them at Ottawa; one of them was a nephew or a son or something of the clerk of the clerk of the court or some relation of his.

Q. What was his name—Dutton?

A. I don't think it was. I don't think I know what his name is.

Q. Was it Taylor?

A. It was not Mr. Taylor; it was another young man; another was a young lawyer there, whose name I don't remember, and the third at Ottawa was a lady.

Q. Do you remember her name?

A. I do.

Q. What was it?

A. Waxxam.

Q. How long did each one assist you?

A. Well, the services on the part of the two young men might not have exceeded a week for one and two weeks for the other. I sent to Chicago partly in order that she might render this assistance and partly because she was an invalid and it was in accordance with her health that she should remain at Ottawa in the use of certain mineral waters there, and she remained there work-

1029 ing more or less at reading the copy from time to time as I found necessary, from about May to about December.

Q. Were you there all that time?

A. From about May to about December?

Q. Yes.

A. I remained there some time longer than that, if I recollect right.

Q. You were there all the time she was, were you?

A. Yes, sir.

Q. You were working together on this?

A. Well, when she was at work at all it was in connection with this work; what I needed was a reader steadily.

Q. Who was your assistant at Springfield?

A. It was a young man referred to me by Mr. Freeman, whose name I do not now remember, at whose house I boarded.

Q. You can't remember his name?

A. I don't remember his name.

Q. Who was the assistant at Mt. Vernon?

A. He was a young man selected for me by the clerk there, and, I think, a student at law; I am quite certain he was a student at law, but I don't remember his name.

Q. Was his name Loomis—do you remember?

A. Well, I don't think I have the least recollection in relation to his name.

Q. Where was the work done that you did at Ottawa—in the clerk's office or library?

A. A portion of it was done there and a portion of it at my library.

1030 Q. How much of it was done at your library and how much in the clerk's office; was the greater part of it done at one place or the other; if so, which? I refer to the work that you were assisted in by this lady.

A. A portion of it was done in each place and a portion also at the springs, where she boarded, opposite the river.

Q. Was the portion that you speak of now done at the hotel and at the springs; the comparison of the records on the opinions, using the original opinions and the original records, were they taken there?

A. A portion of it was by her reading the opinion in the book and I reading the original opinion.

Q. Then that original opinion was taken by you to the hotel?

A. Yes, sir.

Q. And to the springs?

A. Yes, sir.

Q. Did she do any of the work with you at the court-house?

A. Yes, sir.

Q. You stated in your direct examination that you had procured the abstract of record in the case of Raney *vs.* Boyd and a certificate from the clerk; when did you get it?

A. I should think about a month ago.

Q. You said in the course of your examination that you had examined the original records in the case of Chiniquy *vs.* The Catholic Bishops of Chicago; when was that examination made that you referred to in your direct examination?

1031 A. I should think about three weeks ago, or two.

Q. You stated youwere employed on a salary for doing this work; what was that salary?

A. Well, unless it is material I should prefer not to state, on the ground that that is an inquiry into my private business, which could not by any possibility relate to the business of Mr. Myers.

Q. I only deem it material as affording some indication of the amount of work done and its character; you have stated the time you were employed, and you were asked by counsel for the defendant as to how you were doing the work and you stated it was on a salary, and I wish you to state how much that salary was.

A. The rate of compensation was $50 a week and my traveling expenses and disbursements.

Q. Does that include the compensation of the assistants, or was that paid in addition?

A. That was not alluded to in the original agreement.

Q. Who paid it, you or Callahan & Co.?

A. I would prefer not to state anything more than my general recollection in relation to it is that the total amount paid was somewhere from thirty-one hundred to thirty-two hundred dollars, as near as I can tell; my impression is that it is exclusive of $150 a volume for these two volumes, 41 and 42, which had been settled for preceding that.

Q. 41 and 42 were included in the original contract?

1032 A. Yes, sir.

Q. The contract made with them originally was for publishing part of the volumes from 32 to 39, was it?

A. It had no reference to these volumes 41 and 42 in this series. The contract was for the preparation of new syllabi and annotation.

Q. When you say it was in the original contract do you mean in the contract which they made for the editing or the preparation of part of the volumes from 32 to 39?

A. No; a different contract was made in relation to each book.

Q. Wasn't the contract to pay $150 for these two volumes made before the filing of the original bill in this case?

A. I should think so. I should think it was made in August, the year before.

Q. What was done with the copy for the books prepared by you after its use by the printer?

A. It was not preserved, so far as I know.

Q. Was it returned to you with the proof?

A. It came back to me once with the proof; sometimes it went back again with the corrected proof to the printer; a great deal of it did not; it was simply treated by me as waste paper.

Mr. LE MOYNE: I ask to have inserted in the testimony now a notice to produce the copy from which all books of the
1033 defendant were printed, and ask that it may be produced before the testimony on their behalf is closed.

Redirect examination by Mr. HIGH:

Q. Did the contract to take $50 per week and expenses and disbursements apply to the volumes prior to 39 or only to 39 to 46?

A. There was none of the work done on the volumes prior to 39 under that contract.

Q. And only applied to the volumes included in the supplemental bill, 39 to 46?

A. Yes. sir.

Q. You have stated on cross-examination that in preparing your volume Freeman's volume was cut up and portions used. What portions were so used?

A. You allude to volumes 38 to 40?

Q. Yes; all the volumes embraced in the supplemental bill.

A. Well, as a rule, the opinions were used as a basis for getting the perfected copy, and were sent to the printer when corrected as the copy from which he was to set up the opinions, and in a few of the cases that I have stated, documentary, and so on, matter not in the opinions was used as the basis in obtaining a correct copy of matter on file, and in such cases it was also sent to the printer for copy.

Q. You mean where Freeman himself had copied documents, agreements, &c.?

1034 A. Yes; where he had taken a document from the files whole. I got the document from the files as he did, if I could, and in many cases I could; there were some cases in which I could not, and in those cases I used his copy as the basis of obtaining mine.

Q. Since your first examination, some days since, have you made an examination of the volumes 39 to 46 with reference to ascertaining the number of cases in which you thus used Mr. Freeman's copy, as to the original documents or pleadings which he had copied entire from the records?

A. I have examined the seven volumes with reference to that point.

Q. State the result of your examination.

A. As the result of my examination, I think that in the seven volumes there are about seventeen cases in which documentary matter of this kind was used as the basis for sending from the records to the printer a copy of the matter on the records.

Q. What are those cases?

A. Skinner *vs.* Fulton, volume 39, page 486; Stone *vs.* Great Western Oil Company, volume 41, page 89; McCormick *vs.* Moss, vol. 41, p. 352; Gardiner *vs.* Dietrich, vol. 41, p. 160; Russel *vs.* Brown, vol. 41, p. 184; Ames *vs.* Carleton, vol. 41, p. 262; Cornwell *vs.* Crengle, vol. 141, page 395; Rounds *vs.* Smith, vol. 42, p. 245; American Express Company *vs.* Perkins, vol. 42, p. 459, probably; possibly Chadwick *vs.* Parker, vol. 44, p. 328; possibly, also, Hopkins *vs.*

1035 Holmes, vol. 44, p. 360; Graham *vs.* Holloway, vol. 44, p. 388; Steele *vs.* The People, vol. 45, p. 152; Parsons *vs.* Ely, vol. 45; p. 232; Carver *vs.* Jones, vol. 45, p. 334; Parker *vs.* Fallansbee, vol.,

45, p. 473; in some of which cases, however, the departure on the part of my copy as printed from Freeman's copy is quite considerable, and in some of these cases I have strong grounds for believing that the entire statement of facts was made by the court, though I cannot positively state from recollection which those cases are. Where the statement of facts is long and intricate in Mr. Freeman's volume it will frequently be found that it appears on file in the handwriting of the judge who filed the opinion.

Q. Do you mean, then, that Freeman frequently used the statement of facts as contained in the judge's opinion and then began the judge's opinion in his report where the judge had concluded his statement of facts?

A. No, sir; I think that the judge himself made the division in writing his opinion, and concluded to furnish the statement of facts for the reporter from his own choice.

Q. Did you in those cases find the statement of facts in the handwriting of the judge?

A. In those cases?

Q. No; in the class of cases to which you refer.

A. There were cases in which I found the statement of facts to be in the handwriting of the judge.

Q. And that Mr. Freeman had used those?

1036 A. Yes, sir.

Q. Were those frequent or few?

A. Well, relatively to the number of cases in which Mr. Freeman published long statement of facts, they were few; relatively to the whole number of cases they reported they were few.

Q. Do you mean when he published long statements of fact he frequently takes them from the statement as written out by the judge?

A. Yes, sir; I mean that the judge furnishes him with the statement of facts bodily, just as he prints them in those cases.

Q. You have said that upon inquiry you found many of the original opinions missing from the files, and that several bushels of them were afterwards supplied by Mr. Freeman.

A. Yes, sir; on my first visit to Springfield I was embarrassed by the discovery that the opinions were so badly recorded that I could not trust to the books or record, and that the original opinions were not all on file, and I called first upon the clerk of the court and then upon Mr. Freeman for an explanation of the absence of these opinions from the files, strongly urging my need of them, and on my return from Mt. Vernon, I think it was, Mr. Freeman's man came into the clerk's office with some kind of a large load of these opinions. I think they were put up in sacks like potato sacks or something of that kind, and that there were few of them; my impression is that they were brought down on a wheelbarrow, but I wouldn't

1037 be sure as to the conveyance; it might have been some sort of a hand-cart; and upon their restoration of the records I was able to go on with my work more satisfactorily.

Q. Did you then use those original opinions after they were restored?

A. I think I did.

Q. You have stated that you told Callahan & Co. that the volumes prepared from the certified copies of the opinions as recorded would be worthless; what was the reason for that?

A. Because I found that the opinions as recorded, especially at Springfield, was so carelessly recorded and that so many changes had been made in the written opinions that did not appear in the recorded opinions that only the written opinions could be trusted.

Q. Did you find whether Mr. Freeman had generally used the written or the recorded opinion?

A. Mr. Freeman's practice seemed to be in all cases to send the opinion as written by the judge to the printer for the printer's marks —that is, the name of the printer to whom the copy was distributed appeared in large numbers on the judge's manuscript as subsequently filed; so that his practice seemed to be to send the judge's manuscript to the printer, and then when it was returned to make up the bundles containing the opinions of the judges; for instance, the opinions of Walker or of Breeze or of Lawrence for a single term forming one bundle, and then if he returned them to the clerk's office at all they were pigeon-holed by themselves. I state
1038 this as something that seemed to be from the printer's marks upon the copy, and in addition I believe that Mr. Freeman confirmed that impression in conversation.

Q. You have been asked to produce the copy of these volumes furnished by you to the printer and have stated that you regarded it as mere waste paper. What did you do with it?

A. I think it was allowed to be swept up and disappeared as waste paper usually does. There continued to be scraps of it around my trunk and among my papers for some little time, but I do not remember now to have seen any of it for years.

Q. Was it all thrown away, do you recollect?

A. Yes, sir.

Q. Where, in the briefs on file, you found that counsel had themselves stated the points concisely on which they relied, numbering them, consecutively, 1, 2, 3, 4, &c., with the authority supporting them, did you not, in some instances, use those points substantially as given by counsel?

A. Oh, yes; in volume 39 I printed quite a number of briefs from the records—that is, I was furnished with complete copies and I used them without doing any work upon them myself, except to cut them out?

Q. Did you not, in some of the other volumes, when you found that counsel had concisely stated their points in the briefs proper aside from the argument which follow them, use their arrangement of the matter?

A. Yes, sir; and in some instances, where there were more
1039 than a certain number of them, either two or three copies, on file I was permitted to cut from the briefs on file. Some of the briefs would be on file without filing marks. There would be, for instance, on file two or three copies, and others would be simply laid in among the papers, and in those cases I would be permitted

to cut the brief. I think it would be safe to say that in — case of Atkin *vs.* Merrill, vol. 39, p. 64, there was a large amount of matter simply cut either from the abstract of record or from briefs or both. There happened to be at Mt. Vernon a good many briefs filed, frequently five or six.

Q. State whether you found that Mr. Freemen had or had not in some instances pursued that course?

A. I inferred that he had from the very considerable correspondence between his copy and mine, but still, where both he and I pursued that course, there would arise, frequently, slight differences, owing to the fact that upon most of the copies counsel would write a portion of their authorities in their own manuscript, and he might get it and I not get it, or I might not get it in my copy and he not get it in his, so that even where both would cut our matter from the briefs they would differ in these occasional particulars; and I also infer that he did so from finding the remnants of briefs still on file after the scissors had been used in extracting the precise portions which appear in his copy of the book; that raised a pretty
1040 strong inference in my mind that as the portions which had been extracted from printed briefs were precisely those that appeared in his copy of the book that they had been cut out by him.

Recross-examination by Mr. LE MOYNE:

Q. You say that certain portions of Freeman's statement of fact or documents were used by you as a basis of getting information from the record. What do you mean by that?

A. I mean that before taking them I corrected them by comparison with the original, making such changes on them that when sent to the printer they could not be said to be Freeman's copy, but they were a new result in which Freeman's copy formed part and my own emendations formed the other part.

Q. Then in all cases you compared them with the original record?

A. Yes, sir.

Q. And how could you distinguish the cases in which you used Freeman's statements and corrected them from those cases in which you made the whole statement from the record?

A. I distinguished them by the documentary matter that is involved in them. If I strike a case in which there are documents that, together, occupy three or four or ten pages I assume that I did not make a manuscript copy of those three or four or ten pages, but that I did one or the other of three things—I either cut them
1041 from the same source that Freeman did or I took the copy as published by him, compared it, and, after revising it, used it.

Q. That is, you infer this, do you, from the fact that the document is long?

A. Yes, sir.

Q. And that is the way in which you have distinguished the cases that you have enumerated, is it?

A. That is my principal clue to them.

Q. Where you found among the files a written statement of the fact which you supposed or have stated was in the handwriting of the judge or some of the justices of the supreme court was it signed by any of the judges, or did you only infer that it was written by them from the handwriting?

A. From the handwriting.

Q. Did you use those statements?

A. My impression is that I did so in one or two instances.

Q. Is that all—one or two instances?

A. Well, I couldn't say as to that without an examination, because notwithstanding the judge may have prepared a statement of facts, although I would have felt perfectly free to use it, I might not have deemed it desirable to use it, and I am not sure that I did so now in any instance. It would require more examination than I have made.

Q. Then you are uncertain as to whether you used any of them or not, are you?

1042 A. I have stated one instance in which I used an indorsement of that kind, which was in the nature of a statement of fact concerning a rehearing. Now, my impression is that there are one or two other instances in which, from the very beginning of the statement of facts, the language is that of the court, and the statement of fact is filed in the handwriting of the judge—my impression is, but I am not sure of that.

Q. You are not sure you mean that it is in the handwriting of the judge or what?

A. No; I say I am not sure that I made use of the exact statement of fact even when it was so filed in the handwriting of the judge.

Q. Now, are you sure that you did not—are you?

A. Now, am I sure that I did not? I should have felt it proper to do so if I thought it desirable, and, on the other hand, if I thought I could improve the statement of fact in any way I should have done so.

And thereupon defendants read in evidence the deposition of A. P. Callahan as follows:

1043 Testimony of A. P. Callahan, taken before Henry W. Bishop, master in chancery of said court, Wednesday, the 23rd day of November, A. D. 1881, on behalf of defendants.

Q. You are one of the defendants in this case, I believe?

A. Yes, sir.

Q. In the supplemental bill it is charged by complainant that the defendants, Callahan & Co., have announced in their catalogues the Illinois Reports under the name of Freeman's Reports. What is the fact as to that?

A. The facts are that the catalogues are made up largely by copying from other catalogues, and undoubtedly that line in which Freeman's Reports appeared was copied, without particular attention, by

the clerks who made up the catalogues or the first draft of them; but we took care to prevent any misunderstanding on that point by putting underneath a full statement of the character of the new edition, calling particular attention to the fact that they were re-edited—the volumes to be re-edited and the names of the editors.

Q. Did that appear on the same page in the catalogues with the words Freeman's Reports?

Objected to.

A. Yes, sir.

Q. Have you a catalogue with you?

A. Yes, sir.

1044 Q. Will you read from the catalogue the language to which you refer?

Objected to on the ground that the book shows for itself.

A. Underneath that portion of the description of the Illinois Reports which gives the names of the different reports we say: "Volume 32 to 46, inclusive, are re-reported and annotated with the references to all analogous cases throughout the entire set (those words being in capital letters to distinguish them from the rest of the matter, which is in ordinary type), each case being then accompanied by a brief of the subject-matter of the case. This, with the well-known superiority of its judiciary and the great diversity of litigation arising in this State, make the reports of more than average value. The editorial work has been performed by Hon. J. M. Bailey, of Freeport; Hon. Levi North, author of North's Probate Practice; Prof. V. B. Denslow, of the Union College of Law of Chicago; Prof. M. D. Ewell, of the Union College of Law and auther of Ewell on on Fixtures," &c.

Q. With reference to the advertising by circulars, publications, and otherwise of these books by your firm state whether any similar announcements to that accompanied the advertisements in all cases.

A. It appears everywhere where there is a description of the Illinois Reports. In the back part of the book, which is, as I say, copied from other catalogues, where there is no descrip-

1045 tion whatever of any edition, it is, of course, omitted. Nearly all the different sets that have been reprinted have been reprinted with notes—different sets of State Reports, and none of these are described in that portion of the catalogue which is purely chronological, but it was the aim of the house to call particular attention to the fact that this was an entirely new edition and superior to the old one.

Q. Was that, in fact, done in all your advertisements of these volumes mentioned in the supplemental bill?

A. Yes, sir.

Q. Did those advertisements all indicate the names of the new reporters or editors of your books?

Objected to.

A. I think they did.

Q. State whether there is any general custom or usage in the trade with reference to cataloguing reports in that way by the name of the original reporter even though there may be subsequent editions by other editors or reporters.

A. Well, as far as my knowledge and observation have extended, I don't know of a single case in a catalogue where there has been any change made in the names of the reporters.

Q. You mean the trade generally still indicate in their catalogue the name of the original reporter?

A. Well, that is the mode of making up catalogues. A catalogue is made up by copying from other catalogues largely—that
1046 is, in reports. I never knew of a case where a catalogue had been made up by any firm of any account by going to the individual volumes of the sets and finding out who reported them and when they were published.

Q. State whether Mr. Myers had ever called the attention of your firm to the use of the word- " Freeman's Reports " in your catalogue prior to the filing of the supplemental bill or made any objection or complaint prior to that time.

A. No; I don't see how he could.

Q. Well, just state the fact.

A. We constantly called attention to the difference between the two sets, claiming that ours was superior, and pointing out what, in our judgment, constituted the superiority.

Q. Had he in any way, directly or indirectly, ever made any objection to the use of the word- " Freeman's Reports " in your catalogue or advertisements prior to the filing of the supplemental bill?

A. Not that I know of.

Q. What change, if any, did you make in that regard after the filing of the supplemental bill?

Objected to.

A. When you directed our attention to the fact that exception was taken to the use of the name Freeman in our catalogue we deferred to your judgment in the matter and changed it, though our opinion was to the effect that it could not possibly mislead.

1047 Q. Was that done immediately on the filing of the supplemental bill?

Objected to.

A. That was done immediately.

Q. What instructions, if any, were given by your firm to your salesmen and employees with reference to the announcement of these volumes included in the supplemental bill?

Objected to.

A. They were directed to call attention in every case where they attempted to sell or sold a set to the difference between the two editions to the fact that the annotated and re-edited edition was very much superior to the old and worth more money.

Q. Have those instructions been carried out, so far as you know?

A. So far as I know, without an exception.

Q. What has been the practice of your firm or employés in that regard where the volumes were bought in the store?

A. Invariably the same, so far as my knowledge extends.

Q. Have you in any way, directly or indirectly, represented your edition of these volumes, 39 to 46, as being the edition named by Mr. Myers?

A. Never. We ask more money for our edition than the other was selling at. It would be folly to represent it as an inferior set value.

Q. Then you never did, in fact, represent it as his in any way?

A. Never did.

1048 Q. State, if you can, the date of the publication by your firm of these several volumes mentioned in the supplemental bill, respectively.

A. Volume 39 was published January 24, 1879; volume 41 was published April 26, 1879; volume 42 was published December 10th, 1878; volume 43 was published September 13th, 1878; volume 44 was published April 26th, 1879; volume 45 was published March 18, 1879; volume 46 was published October 25, 1878.

Cross-examination by Mr. LE MOYNE:

Q. What do you mean by published?

A. Received from the binder and put on sale in the store bound.

Q. When you say that in your notices you called attention to the difference between your own edition and the other edition, do you mean it was by printed circulars and catalogues?

A. Yes, sir.

Q. How many of those did you have, and when were they issued?

A. The first circular, I think, that we issued was in March or February, 1877; it is on file in this case. In that we announced a new edition re-reported; that was when we first concluded to republish them, or rather we first publicly announced the republication. In the different circulars of the legal books and in our catalo-

1049 gues it was announced, I should think—perhaps all together we issued half a dozen different circulars or catalogues including that.

Q. Give the date of the issue.

A. Of the issues of circulars and catalogues?

A. Yes.

Q. Yes.

A. I can't; we keep no record of these; we are issuing circulars all the time.

Q. During what time?

A. Between March, 1877, and—well, this catalogue we published in 1879—January, 1879—and I think we published a four-page trade list in 1880. I should say, therefore, between March, 1877, and sometime in 1880.

Q. Between those two dates your recollection is that you issued about half a dozen circulars and catalogues in which mention was made of these reports; is that what you mean to say?

A. Yes, sir.

Q. And when you say that you have given the notices you mean that it was in those circulars and catalogues you gave them, do you?

A. I can't tell exactly what particular catalogues these were embraced in or what particular circulars, but the aim of the house was to include them—that is, wherever we published Illinois Reports to include that.

Q. I am not asking what the aim was; I am asking whether or not you have testified on your direct examination to the circulars and catalogues issued during the time you have now named as containing information which you say you gave in regard to these reports?

1050 A. Yes, sir.

Q. You think there were about half a dozen?

A. I think there were about half a dozen.

Q. I will ask you to produce copies of them.

A. Well, I can't promise to do it now; we don't make a rule of keeping copies of all our circulars.

Q. Have you looked to see what you have of them?

A. No.

Q. You made no examination to look them over and find what you had or to see what they contained?

A. No; I didn't expect to be called upon for copies of the circulars and catalogues.

Q. I will ask you to produce copies of all the circulars and all the catalogues issued between the dates you have mentioned in which reference is made to these reports.

A. Yes, sir; I will try and get them for you.

Q. Is this catalogue that you have produced now in the same condition that it was when it was issued?

A. No; it was changed by direction of Mr. High.

Q. For the purpose of this examination?

A. No, sir;

Q. I mean were the prices that are pasted on the same?

A. In my direct examination I explained that when an exception was taken to our announcement of these reports, 31 to 95, as Freeman's Mr. High asked us to change it and issue no more catalogues in that way. We demurred, because we didn't think it was

1051 necessary. The change occurs only in that one word—Freeman's Reports.

Q. Will you please give the reporter the page?

A. On page 121. There is another place in the same catalogue, page XXX. Exception was taken by you, as I understand, in the supplemental bill to the use of the word "Freeman's" as misleading, as Mr. High asked us to change it, and we did so. We re-reprinted this slip and changed the word from Freeman's to Illinois and put it in there, so that we are sending out our old catalogues printed before that changed, as directed by Mr. High, with this slip announcing this difference.

Q. That slip there was printed and pasted on after the filing of the supplemental bill in this case?

A. After he directed us to do so.

Q. And I understand he directed you to do so in consequence of the filing of this supplemental bill?

A. I presume so.

Q. And this catalogue you now produce is not in the same condition as it was at the time the bill was filed?

A. With the exception of that one word, Freeman's.

Q. In both places?

A. In both places; it is now Illinois.

Q. Haven't you circulated that same catalogue without these changes since that time?

A. Not since we were advised by Mr. High not to do so.

Q. Can you fix the date?

A. Perhaps Mr. High can.

1052 Counsel for defendant- states that it was immediately upon the filing of the supplemental bill.

Q. Will you swear that since you were so advised none of the copies have been circulated except as changed in this manner?

A. Not to my knowledge; we immediately directed the change to be made.

And thereupon the defendants read in evidence the deposition of A. N. Waterman, as follows:

1053 A. N. Waterman, a witness on behalf of defendant-, whose testimony was taken before Henry W. Bishop, master in chancery of said court, on Wednesday, the twenty-third day of November, A. D. 1881, in said cause.

Int. 1. Please state your name, residence, and occupation.

A. N. Waterman; I reside in Chicago, and am a lawyer.

Q. How long have you been engaged in the practice of law?

A. In this city, since 1865.

Q. Are you familiar with the Illinois Reports, volumes 39 to 46, inclusive, excepting 40, which is not in issue here, as originally reported by Mr. Freeman, and also with the corresponding volumes as published by the defendants, Callahan & Co.?

A. Yes; somewhat. I have owned both sets—that is, I owned the edition reported by Mr. Freeman prior to the fire, and then subsequent to the fire, for 4 or 5 years, I had in my office the same, and since 1877, I think it was, I have had the edition of those volumes published by Callahan, with the exception of 40.

Q. You mean since the Callahan edition appeared and was published?

A. Since the Callahan edition appeared; yes.

Q. The testimony shows that they were published in 1878 and '9.

A. Some of them were in 1877, I think. I got them from

1054 time to time, as they were brought out by Callahan.

Q. State whether you ever made a comparison of the respective editions, the Myers & Callahan edition, of these volumes, 39 to 46, inclusive, with reference to the point of similarity or points

of similarity or difference between them; if so, state fully what you did in that regard and the results of your comparison.

A. Well, the volumes after the 40th that were reported by Mr. Denslow I made an examination of; compared them with the same volumes reported by Mr. Freeman.

Q. Did you include the 39th?

A. I did look at the 39th some, but not as fully as I did of the others.

Q. Go on and state, in your own way, what comparison you made and the result of it.

A. Well, I took the volumes reported by Mr Denslow myself, and had a clerk in my office take the volumes reported by Mr. Freeman, and commenced taking four or five cases at random—in some instances more than that number of cases—and read the syllabi.

Q. That many cases in each volume?

A. That many cases in each volume; read the syllabi and the statement of facts, if there was any, and also the briefs and authorities counsel gave, if any were given, and then taking 6 or 7 subjects in the various indexes and reading them in the same way, while I was at the same time looking over the same subjects in Denslow's; that is the special examination I made. Of course, I have
1055 a great many times, in looking over the volumes, seen the various things which I have mentioned—that is, the various syllabi, statement of facts, &c.

Q. Now, what was the result of this examination with reference to disclosing any points of similarity or difference in the two editions?

A. I didn't find in any case in this special examination that I made—I have never noticed in any case—that either the syllabi or statement of facts or the briefs of counsel in the indexes were alike in any other respect than a similarity which would exist in any account which two persons might give of a document which they had read. There were some syllabi—that is, where there are 7 or 8 of syllabi to one case—there were some instances in which one syllabi would read very much alike in both Denslow's report and in Mr. Freeman's, but in every instance where I found that thing in looking at the opinion in the case I found that the syllabi was taken almost entirely bodily from what was stated in the opinion.

Q. How was it with regard to the statements of the facts?

A. So far as I examined the statements of facts, where both parties had given a statement of facts, there were no instances alike, and I found a good many cases in which Mr. Denslow had given a statement of facts where Freeman had not given any; also cases where Mr. Denslow had given briefs of counsel authority
1056 where Mr. Freeman had not given any.

Q. Did you find any instances where Freeman had given a statement of facts or an abstract of the arguments of the counsel where additional matter appeared in the corresponding abstract of Mr. Denslow?

A. I couldn't say as to that, except this: That the statement of facts given by Mr. Denslow appeared to be fuller, more complete,

and in no instance were they the same. What I mean by being the same, in no instance was the language the same, but they were relating to the same subject, and they were taken, I presume, from the same document, and of course the main features, so far as the result, the conclusion, arrived at is concerned, they would be the same.

Q. In regard to authorities cited or briefs of counsel did you find any difference?

A. I found that Mr. Denslow gave a much fuller and much more complete report than Mr. Freeman.

Q. You mean he gave a great many additional authorities?

A. Yes.

Q. How was it with regard to indexes?

A. The indexes were not alike at all. They did not always index the same opinion, the same title; the arrangement was different; the language was different.

Q. How was it with regard to foot-notes?

A. The volumes reported by Mr. Denslow contained, all through them, a great many notes, illustrated notes in many instances,
1057 and such notes or notes of any kind are almost entirely wanting in the volumes reported by Freeman.

Q. What did those foot-notes embrace?

A. They embraced, apparently, a research, the result of a research made by the reporter, in which apparently he has given his own views of a great many decisions that have been made and cited a great many authorities which probably he has found himself.

Q. You found nothing corresponding in Freeman's book?

A. Nothing.

Q. State whether you have used the Callahan edition of these volumes constantly in your practice since they appeared.

A. I have.

Q. I understand that you had used the Freeman volumes before the Callahan volumes appeared?

A. Yes.

Q. Constantly in your practice?

A. Yes.

Q. And from such use and examination of the two editions of these volumes, what would you say as to the superiority of the one over the other, if either is superior?

A. I think the volumes reported by Mr. Denslow are much superior to those reported by Mr. Freeman.

Q. In what respect?

A. I think they are superior in this, that the citation of authorities given is much more extensive—I mean the authorities
1058 given by counsel in the cases—but the particular element of superiority, I think, is in the foot-notes; I regard them as a very valuable addition.

Q. From your examination and use of these two different editions, what would you say as to the probability of a purchaser of ordinary intelligence being likely to mistake the one for the other, or to

buy the Callahan edition under the impression that he was buying the Freeman edition?

A. Well, I should say that if he examined the volumes with any sort of care—looked through them at all—that the very numerous and extensive foot-notes, as they are in the volumes reported by Mr. Denslow, would attract his attention at once and he could not fail to observe that that was a different edition from that reported by Freeman. They are in a different type, and that would catch his eye at once, and they occupy quite an amonnt of space.

Q. Wouldn't that difference, in your judgment, be apparent in almost any case in these volumes, at random?

A. No; there are cases in which I don't think it would be. A man might light upon a volume and not observe such a case, but I think a very strong probability is that in opening the volume he would observe such foot-notes.

Q. How would it be with reference to the title page?

A. In what regard?

1059 Q. As to whether the purchaser would be likely to mistake the one for the other?

A. I do not remember to have observed the distinction of the title pages other than I think now I have observed upon the title page reported by V. B. Denslow. I think I noticed that. I don't think I noticed any difference other than that.

Q. Do I understand that these special cases in which you have made the careful comparison as described were taken by you merely at random or without any selection?

A. Without any selection other than that in two or three volumes. I took 1, 2, or 3 of the first cases afterwards at random without any suggestion or any endeavor whatever to select cases, but took them at random.

Adjourned to Friday, 2 o'clock p. m., Nov. 25th, 1881.

And thereupon defendants read in evidence the deposition of A. P. Callaghan on further cross-examination as follows:

1060 Testimony of A. P. Callaghan, taken before Henry W. Bishop, master in chancery of said court, on Monday, the twelfth day of December, A. D. 1881, on behalf of defendants.

A. I instructed our clerks all over the store — for such copies of circulars and catalogues as contained the detailed description of the Illinois Reports reprinted and find four, which are herewith submitted. These are all that we can find. By consent of the counsel for both parties I cut out of our catalogue bearing date 1879, and concerning which I testified in my former examination, pages numbered three XXX, and the same is annexed to my deposition, Exhibit No. 1 X, this page being similar to pages 53 and 54 of the same catalogue hereto annexed and marked Exhibit No. 2 X. In the catalogue of October, '77, I have cut out page 14, which is made Exhibit No. 3 X, and in the same catalogue the last page, being a part of the cover, is made Exhibit No. 4 X. Exhibit No. 5 X is a circular issued

by us about December, 1877. Exhibit No. 6 X I do not know when it was first issued, but we are circulating it now.

Q. State whether or not you have inserted any advertisements in any of the State Gazeteers this year.

A. I think not.

Q. In the circular No. 6 X, which you have just offered, I find the word Freeman under the head of Illinois Reports, the
1061 word Freeman erased in pencil. State whether that has been erased in all these circulars that have been sent out by the firm since the time the change was made, as before testified by you.

A. It has been done.

Q. When was the change made?

A. Immediately upon our notification by Mr. High that, in his judgment, it was necessary.

Q. Fix the date as near as you can.

A. I cannot do that without Mr. High's assistance; it was immediately after he made the point. He came, I think, that same day.

Counsel for defendant states to the witness he notified them to make such change, and immediately after the filing of the supplemental bill in this case.

Q. Have you seen your advertisement of these books in the Michigan Gazeteer for 1881?

A. No; I have not. I made out the copy for all the gazeteers in which we advertise, but I think I made none out this year. I have not seen any of our advertisements this year in any gazeteer.

Q. Don't you know it appears in the Michigan Gazeteer for 1881 as Freeman's Report?

A. I don't know that; if it was so it was done before Mr. High notified us.

1062 EXHIBIT No. 1 X.

XXX. *List of Publications of Illinois Reports.*

Reports of cases in the supreme judicial court of Illinois, comprising—

Breese's Reports, 1 Ill., 1819–1831, 1 vol.		6 00
Scammon's Reports, 2–5 Ill., 1832–1843, 4 vols.		30 00
Gilman's Reports, 6–10 Ill., 1844–1848, 5	"	37 00
Peck's Reports, 11–30 Ill., 1849–1862, 20	"	150 00
Illinois Reports, 31–95, Ill., 1863–1878, 65	"	209 25

Volumes 32 to 46, inclusive, are re-reported and annotated with reference to all the analogous cases throughout the entire set, each case being thus accompanied by a brief on the subject-matter of the case. This feature, the well-known ability of its judiciary, and the great diversity of litigation arising in this State make the reports of more than average value. The editorial work has been performed by Hon. J. M. Bailey, Freeport; Hon. Levi North, author

of "North's Probate Practice;" Prof. V. B. Denslow, of the Union College of Law, Chicago, and Prof. M. D. Ewell, of the Union College of Law and author of "Ewell on Fixtures," etc.

The Reports of the State of Illinois have acquired a very high reputation throughout the Union.—American Law Register.

We notice here almost all the questions discussed and determined which we should expect to find in the current volumes of reports in any of the older States. * * * For private libra-
1063 ries few State Reports will be found more valuable.—American Law Register.

In press.—A new and complete Illinois Digest, embracing all the reports from the beginning to the year 1879.

Iglehart's Civil Practice.

A treatise on pleadings and practice in civil cases in the courts of Indiana, with forms, by Hon. Asa Iglehart, 1 vol. 8vo, price, $6.00 net.

1064 Ex. No. 2 X.

54. Callaghan & Co.'s.

Gilman's Reports, 6–10 Ill., 1844–1848, 5 —	37 50
Peck's Reports, 11–30 Ill., 1849–1862, 20 "	150 00
Illinois Reports, 31–95 Ill., 1863–1878, 65 "	209 25

Volumes 32 to 46, inclusive, are re-reported and annotated, with references to all the analogous case- throughout the entire set, each case being thus accompanied by a brief on the subject-matter of the case. This feature, the well-known ability of its judiciary, and the great diversity of litigation arising in this State make the reports of more than average value.

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Indiana Criminal Practice, a treatise on the practice in criminal cases in the different courts of the State of Indiana, by Alfred Moore, 1 vol., 8vo, 1150 pages, $6.00 net.

Indiana Civil Practice, a treatise on pleadings and practice
1065 in civil cases in the courts of Indiana, with forms, by Hon. Asa Iglehart, 1 vol., 8vo, $6.00 net.

Injunctions. See High.

Indermaur, an epitome of leading conveyancing and equity cases, with some short notes thereon, for the use of students, by John Indermaur, 8vo, cloth, $2.50. London, 1874.

Indermaur, an epitome of leading common law cases, with some short notes thereon, chiefly intended as a guide to Smith's Leading Cases, 8vo, cloth, $2.00. London, 1874.

Indermaur's Self Preparation for Final Examination, containing a complete course of study, with statutes, cases, and questions, 8vo, cloth, $1.25. London, 1874.

Hughes' Equity Draftsman, being a selection of forms of pleadings in suits in equity, originally compiled by F. M. Van Heythuysen, revised and enlarged with numerous additional forms and practical notes by E. Hughes, fourth American edition, with copious notes and references to American cases, by a member of the Philadelphia bar, 8vo, $7.50. Philadelphia, 1861.

Hume's History of England, new stereotype edition, large type, 6 vols., 8vo, cloth, $15.00; library sheep, $21.00; half calf, marbled edges, $27.00. Boston, 1872.

Humphrey's Precedents, precedents in suits at law, by C. Humphreys, 2 vols., 8vo. New York, 1845.

1066 Hunter's Suit in Equity, proceedings in a suit in equity, with an appendix of forms, by S. J. Hunter, 8vo, $1.50. Philadelphia, 1860.

Huntington (C. B.), Trial for Forgery—plea, insanity—8vo, $3.50. New York, 1857.

Hurd on *Habeas Corpus*, a treatise on the right of personal liberty and on the writ of *habeas corpus*, by R. G. Hurd, 8vo, second edition, with copious notes and references to recent cases, by Hon. F. Hurd, 8vo, $7.50. Albany, 1876.

Hurd's Law of Freedom and Bondage, law of freedom and bondage in the United States, by J. C. Hurd, 2 vols., 8vo, $10.00. Boston, 1858–'62.

Iglehart's Indiana Treatise, a treatise on the law relating to the powers and duties of justices of the peace and constables in the State of Indiana, conforming to the statutes in force Jan. 1st, 1877, 8vo, $6.00. Cincinnati, 1877.

Iglehart's Civil Practice, a treatise on the practice in courts of record under the code of civil procedure of the State of Indiana, with forms, by Asa Iglehart, 1 vol., 8vo, $6.00 net.

Illinois Digest, digest of the Illinois Reports from 1 to 85, inclusive. In preparation, Chicago.

Illinois Reports, reports of cases in the supreme judicial court of Illinois, comprising—

Breese's Reports, 1 Ill., 1819–1831, 1 vol.	6 00
Scammon's Reports, 2–5 Ill., 1832–1843, 4 vol.	30 00

1067 EXHIBIT No. 3 X.

14.

Illinois Reports—Reports of cases argued in the supreme judicial court of Illinois, comprising—

Illinois Reports, 1 to 36	$270 00
Illinois Reports, 37 to 46	40 00
Illinois Reports, 47 to 81	118 75
Total, 81 vols.	$428 75

☞Where complete sets are taken 20 per cent. discount will be made from this price.

For about twenty years complete sets of these reports could not be obtained except at exorbitant prices, and even then with difficulty, as many of them were out of print and scarce.

In March last we commenced to reprint vols. 1 and 19 to 46, inclusive, and have now issued all but vols. 41–46, inclusive, and these will be issued within sixty days. We may be pardoned for feeling somewhat proud of this fact, for it is a feat never before equalled in the history of our business.

The stereotyping and printing of these twenty-nine volumes of reports means an expenditure of over $40,000, without aid from the State in any form, and during eight months of the greatest depression the country has ever experienced.

Volumes 32 to 46, inclusive, are re-reported and annotated with references to all the analogous cases throughout the entire set, each case being thus accompanied by a brief on the subject-matter
1068 of the case. This feature, the well-known ability of its judiciary, and the great diversity of litigation arising in the State make the reports of more than average value. The editorial work has been performed by Hon. J. M. Bailey, Freeport; Hon. Levi North, author of "North's Probate Justice;" Prof. V. B. Denslow, of the Union College of Law, Chicago, and Prof. M. D. Ewell, of the Union College of Law and author of "Ewell on Fixtures," etc.

1069 EXHIBIT No. 4 X.

Summary of Reports.

Wisconsin Reports, complete,	44	vols.	in	43	$220 00
Illinois Reports, complete,	81	"			428 75
California " "	52	"			260 00
Nevada " "	11	"			40 50
Oregon " "	5	"			30 00
					$979 25

☞We will sell all for $800.

U. S. Circuit Court.

Bissell's	Reports,	7th	circuit,	6	vols.	$45 00
Woolworths'	"	8th	"	1	"	7 50
Sawyer's	"	9th	"	3	"	19 50
Wood's	"	5th	"	2	"	15 00
Wallace's	"	3d	"	1	"	7 50
						$94 50

☞We will sell all for $80.00.

American Criminal Law Reports, vol. 1 ..... $6 50

1070 EXHIBIT No. 5 X.

Standard Law Books.

DEC., '77.

Illinois Reports.—Reports of cases argued in the supreme judicial court of Illinois, comprising—

Illinois Reports, 1 to 36	$270 00
Illinois Reports, 37 to 46	40 00
Illinois Reports, 47 to 81	118 75
Total, 81 vols.	$428 75

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For about twenty years complete sets of these reports could not be obtained except at exorbitant prices, and even then with difficulty, as many of them were out of print and scarce. In March last we commenced to reprint vols. 1 and 19 to 46, inclusive, and have now issued all but vols. 41–46, inclusive, and these will be issued within sixty days.

We may be pardoned for feeling somewhat proud of this fact, for it is a feat never before equaled in the history of our business.

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Volumes 32 to 46, inclusive, are re-reported and annotated with references to all the analogous cases throughout the entire set, each case being thus accompanied by a brief on the subject-matter of the case.

1071 This feature, the well-known ability of its judiciary, and the great diversity of litigation arising in this State make the reports of more than average value. The editorial work has been performed by Hon. J. M. Bailey, Freeport; Hon. Levi North, author of "North's Probate Practice;" Prof. V. B. Denslow, of the Union Col-

lege of Law, Chicago, and Prof. M. D. Ewell, of the Union College of Law, and author of "Ewell on Fixtures," etc.

Moore's Civil Justice.

A treatise on the jurisdiction of and practice before justices of the peace in civil actions in the State of Illinois, with practical forms, adopted to the Revised Statutes of 1874, by Hon. Ira M. Moore, 1 vol., 8vo, 1,020 pages, price $7.50.

I have examined Moore's Civil Justice; it is the most practical and useful law book for years, and it will be of eminent service to the practitioner as well as to the justices of the peace. Its argument is admirable, the law under appropriate heads is concisely and correctly stated, and the authorities cited. No lawyer, justice, or judge should be without this book.—Hon. H. M. Vandeveer, circuit judge, 20th circuit.

Moore's Criminal Law.

A treatise on the jurisdiction of and practice before justices of the peace and in courts of record in criminal cases in the State of Illinois, with practical forms, by Ira M. Moore, author of "Moore's
1072 Civil Justice," one large volume, over 900 pages, $7.50.

This is a companion volume to the author's work on the Civil Practice before Justices, which has lately been published and which has met with so favorable a reception as to justify the publishers in declaring it unexampled in the history of their business.

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The plan of this series is similar to that of "Green's Criminal Law Reports," which were terminated by the death of the author. It consists in selecting those cases of general and paramount importance from all sources and adding exhaustive notes and comments, each note constituting in fact a brief on the subject-matter of the decision.

It is designed to continue the series as long as there shall be a demand for it, and with this object we shall spare neither money nor pains to make it worthy of a large as well as lasting demand. It is our hope to make it the most useful set of criminal reports in existence, and necessary to prosecuting officers and others engaged in criminal practice.

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Being the statutes now in force in this State, with very
1073 copious notes following each section, showing the construction the different courts of this country have given to that of a similar section, by Walter Stager, ready in March.

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Though an Illinois book, it will be useful and convenient in such other of the States as retain the common-law practice. Where precedents in like cases were found in Chitty their general frame-work has been retained, but redundant words and averments rejected. New forms have also been added, among others forms of declarations in actions under the liquor law of 1872.—Chicago Times.

Puterbaugh's Chancery Pleading and Practice.

A practical treatise on the form of chancery suits, pleading, and practice now in use in the State of Illinois and wherever the same system prevails, with forms of bills, answers, pleas, demurrers, exceptions, petitions, orders, decrees, etc., by Sabin D. Puter-
1074 baugh, late one of the judges of the circuit court, 8vo, law sheep, $7.50.

The book is adapted to our practice, and no practitioner in the State can afford to practice law without a copy in his office. The book will be found to be a great convenience to the profession.—Monthly Western Jurist.

We do not hesitate to recommend this work without qualification to the profession in Illinois and in those States which have a similar system of equity procedure.—Central Law Journal.

Adam's and Durham's Real Estate Statutes and Decisions of Illinois.

The real estate laws of Illinois from the earliest territorial period down to the present day, together with a complate digest of the decisions of the supreme court construing these statutes, and copious explanatory and critical notes, by Hon. J. B. Adams and W. J. Durham, of the Chicago bar, 2 vols., 2,000 pages, 8vo, law sheep, $12.00.

It is well known that the legislative enactments of the Territory and State relating to real estate are scattered through a large number of volumes of statutes which are now practically inaccessible, as but very few are in existence, and even if they were in existence there would be great difficulty and labor, involving the loss of valuable time, in ascertaining the condition of the law from so large a mass of undigested matter.

1075 Gilbert's Railway Law in Illinois.

The relation of railroads to the people as set forth in the Constitution of the United States and the decisions of Illinois, together with the decisions of other States and the Federal courts upon the constitutional questions involved, with an introduction by Hon. J. M. Palmer, and an appendix showing the condition of all the railways in the State and the tariff schedule prepared in accordance with law, by Frank Gilbert, 8vo, law sheep, $3.50.

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A treatise on the practice in probate courts in the probate of wills and settlement of estates in the State of Illinois, with forms of wills, codicils, petitions, orders, reports, settlements, and clerks' entries used in county courts in the administration of estates, by Levi North, 8vo, law sheep, $5.00.

This admirable book must prove of indispensable assistance to the profession in Illinois. We find the work also of great practical assistance to the profession in other States than Illinois, for the reason that, although based upon the Illinois statutes and decisions, yet frequent references are made to the decisions of many of the States and to text books, and because of the great similarity of the statutes of all the States on probate practice.—Southern Law Review.

1076 In press.—A new digest of the Illinois Reports, from the organization of the court to the present day, by Hon. M. D. Ewell, author of Ewell on Fixtures.

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1077 EXHIBIT No. 6 X.

List of Publications of Callaghan & Co., Chicago, Ill.

Illinois Reports.—Reports of cases in the supreme judicial court of Illinois, comprising—

Breese's Reports, 1 Ill., 1819–1831, 1 vol.	$6 00
Scammon's Rep., 2–5 Ill., 1832–1843, 4 vol.	30 00
Gilman's Rep., 6–10 Ill., 1844–1848, 5 vol.	37 50
Peck's Rep., 11–30 Ill., 1849–1862, 20 vol.	150 00
Freeman's Rep., 31–46 Ill., 1863–1868, 16 vol.	75 00

Volumes 32 to 46, inclusive, are re-reported and annotated with references to all the analogous cases throughout the entire set, each case being thus accompanied by a brief on the subject-matter of the case. This feature, the well-known ability of its judiciary, and the great diversity of litigations arising in this State make the reports of more than average value. The editorial work has been performed by Hon. J. M. Bailey, Freeport; Hon. Levi North, author of "North's

Probate Practice;" Prof. V. B. Denslow, of the Union College of Law, Chicago, and Prof. M. D. Ewell, of the Union College of Law, and author of "Ewell on Fixtures," etc.

And thereupon defendants read in evidence the further deposition of A. N. Waterman as follows:

1078 Testimony of A. N. Waterman, taken before Henry W. Bishop, master in chancery of said court, on Monday the twelfth day of December, A. D. 1881, on behalf of defendant in said cause.

Q. You stated in your former examination that you had examined all the volumes mentioned in the supplemental bill, with the exception of 39, which you had only examined cursorily. State whether you have since made a further examination of volume 39; and, if so, with what result.

A. I have since examined volume 39, and I have the same to say with reference to it that I said in reference to the other volumes. I have examined it in that way—that is, taking a number of cases at random and comparing the syllabi of the book as reported by Denslow and Bailey, and the same syllabi as made by Mr. Freeman, and as to the statement of the cases and the briefs of counsel, and also examined the index.

Q. You found no greater resemblances than, as I understand you, between volume 39 of the respective editions than you did between the other volumes of which you have already testified?

A. No, sir.

Q. Why was not volume 39 included in your first examination?

A. I did not understand I was requested to make an examination of 39.

Cross-examination by Mr. LE MOYNE:

1079 Q. You say you took a few cases at random from each volume?

A. Yes, sir.

Q. How many in 39?

A. Ten cases.

Q. How many in 40?

A. None in volume 40.

Q. How many in 41?

A. Eight.

Q. How many in 42?

A. Seven.

Q. How many in 43?

A. Eight.

Q. How many in 44?

A. Seven.

Q. How many in 45?

A. Eight.

Q. How many in 46?

A. Fifteen.

Q. I understand the result of this examination was that you found a substantial difference in your opinion between the syllabus of the case in Freeman and the same case in a Callahan issue?

A. Yes, sir.

Q. In what did that difference consist, in the matter of the syllabus or in the form of the syllabus?

A. In the form of the syllabus. The matter in some cases is different, and I repeat what I said on the direct examination as to that, that in the main the substance—that is, what is arrived at by the syllabus in Freeman and in Denslow—is the same, but it
1080 is stated in a different form. The difference apparently is that what it would be from two people reading the same document and then endeavoring each to set down their own conclusions as to what was contained in the document.

Q. Then you mean to say there is a substantial difference in the arrangement and form of the syllabus?

A. Yes, sir.

Q. Did you find also, in your opinion, a substantial difference in the verbiage?

A. Yes, sir.

Q. I suppose you only testify about these particular cases you examine. Do you undertake to testify to the other contents?

A. No, sir; I do not. I have made a memorandum of a certain number of cases. There are some other cases I have looked at, but did not examine carefully enough to make a memorandum, and I have never noticed such a similarity as would seem to me to indicate that one had been copied from the other.

Q. Was it explained to you before you made an examination that one of them had been copied from the other?

A. No; there was not any explanation, but of course I knew the pendency of this suit, and I knew that it was claimed that the volumes brought out by Callaghan infringed the volumes brought out by Myers.

Q. Did you not understand the object of your examination
1081 was to ascertain if one had been copied from the other?

A. Nothing of that kind was said to me.

Q. What were you told was the object of making this examination? I suppose an object was assigned. Now, what was it?

A. My impression is, no object was assigned. I can give just exactly what was said on the subject and how it came about.

Q. You say your recollection is no object for your examination was assigned. Is that so?

A. I think that is just so. I think I was asked to examine them with a view to testifying in the case. My recollection is it was not even said with a view to see whether I could find any difference. I ought to state that prior to that I had expressed an opinion to Mr. Denslow about his reporting.

Q. Before you came here to testify did you inform Mr. Denslow, of the counsel of defendant-, of the result of your examination and what your opinion was on this question?

A. Before I testified here to-day I informed Mr. High what the re-

sult of my examination was, and I had a conversation with Mr. High before I testified at all, but my impression is in that conversation I did not tell him what the result of my examination was. He knew, I may say, that I had talked with Mr. Denslow.

Q. He knew the opinion you had expressed to Mr. Denslow?

1082 A. At any rate, he knew I had talked with Denslow and did not know it from me.

Q. Look at the case in volume 41, page 382, Malert *vs.* Butcher, and state how many divisions there are of the syllabus in each volume in Freeman's book and in Denslow's book.

A. In Denslow's book there are two divisions of the syllabus and in Freeman's book there are three divisions.

Q. Read 1 and 2 of Freeman's book and compare it with 1 in Denslow's, and tell me if you consider those similar or not.

A. I consider that the language or verbiage of the two are essentially different.

Q. How are they in arrangement and the substance of them; are they similar or dissimilar?

A. The doctrine enunciated in the two is the same, but the method of stating the same is essentially different.

Q. Now, look at No. 3 in Freeman's book and compare it with No. 2 in Denslow's, and state whether you consider those similar or not.

A. Those are similar.

Q. Take the case of Heacock *vs.* Durand, vol. 42, page 230, and examine the syllabi and statement of briefs in the book of Freeman and compare them with Denslow's book, and state whether or not they are similar, in your opinion, or whether there is an essential difference.

A. I consider that they are essentially different.

Q. Essentially different in what regard?

1083 A. In the language and in the method of stating what is the substance of the conclusion of each.

Q. You are now referring to the syllabus?

A. I am referring to the syllabi. As to the statement of facts, there is no statement of facts in either. In Freeman's there is a little statement of what the counsel upon each side claim, comprising four or five lines for the counsel of appellant and four or five lines for counsel of appellee. Denslow omits that. The authorities cited are the same.

Q. Now look at page 457 of the same vol. and compare the syllabus of one with that of the other and state whether, in your opinion, they are similar or essentially different.

A. I think there that the method of stating what was decided by the court is essentially different.

Q. Is the verbiage the same or essentially different also, in your opinion?

A. I mean by the verbiage the arrangement of words, as well as the words, too, and in that respect they are essentially different.

Q. Now look at vol. 43, page 22, and state whether the arrangement of the syllabi are similar or different in the case of McDonald

vs. Madison. First observe the catch lines; is there any similarity in them?

A. The catch line under No. 1 in Freeman's is essentially
1084 like catch line No. 1 in Denslow's; catch line No. 2 in Freeman's is not like that in Denslow's; at the same time there is a similarity between the catch lines No-. 2.

Q. Then is there a similarity in the syllabi?

A. I think the syllabi are essentially different.

Q. Look at page 146 of the same volume, Douglas *vs.* Parker, and tell me whether there is a similarity there in the syllabus of the Denslow volume and that of Freeman.

A. Both in Freeman's and Denslow's syllabus No. 1 is the principal; those are unlike. Syllabi No-. 2 in each is very short, containing in one volume 11 words and the other 13, and they are essentially alike.

Q. Turn to page 256 of the same volume, Andrews *vs.* Black, and state whether No. 1 of the syllabus is similar or dissimilar in the two books.

A. They are not alike; there is some similarity.

Q. Is there more similarity between those two than the others that you testified in regard to in your direct examination, or about the same?

A. There is more similarity in most of those which I have examined, but in this case I do not see anything to indicate that one was copied from the other, and there seems to be such a difference as would not ordinarily occur where two people have read the same document and endeavored to put down in writing what is contained.

1085 Q. Turn to vol. 44, page 74, Chicago & Northwestern Railway *vs.* Dement, and examine the 1st division of the syllabus in each book and state whether or not, in your opinion, they are similar or dissimilar.

A. In No. 1 they are similar. They are not alike. I mean by that that the language used is not exactly the same, but they are similar.

Q. In your opinion were they more similar than any others you have testified in regard to in your direct examination?

A. I would not say they are more similar than any I have testified to in my direct examination. They are more similar than most of those I have noticed.

Q. Would you consider the similarity sufficient to create the presumption that one had been copied from the other or not?

A. No; I should not, especially when I come to read the opinion of the court.

Q. Turn to the case of Manny *vs.* Rixford, vol. 44, page 199, and state what is the catch word in each for the 1st paragraph-.

A. In Denslow's it is "pleadings," special pleas amounting to the general issue, and he refers to a note.

Q. What is it in Freeman's?

A. In Freeman's it is "pleadings," pleas amounting to general issue.

Q. Examine 1st paragraphs and state whether they are similar in both books.

A. They are similar.

1086 Q. Is there a greater similarity between those two than the ones you have testified about in your direct examination?

A. A greater similarity than most I have examined.

Q. You say all, or only most?

A. I would say there is a greater similarity than most. I do not know but what I have found some. I think I have found some in which the similarity was as great as that, but in those cases in which I found that to be the case in examining the opinion the syllabus in each case seemed to be taken bodily almost from the opinion of the court.

Q. In the cases you have examined and about which you testified in your direct examination there were some cases in which the syllabi were as similar as these?

A. Yes, sir; I stated in my direct examination there were cases in which they were similar.

Q. Turn to page 345, same volume, Burns *vs.* Jackson, and make a comparison of the syllabus in each book and state whether they are similar or dissimilar.

A. The first part in Freeman's is very similar to the first part in Denslow's; each seems to be taken direct either from a statement of facts made in the opinion or elsewhere, being substantially a statement of what a lease contained. After concluding the statement of what the lease contained the remaining portion of the two are unlike.

1087 Q. Now turn to vol. 45, page —, Sleeper *vs.* Walbaum.

A. I consider that the methods of stating the opinions of the court are essentially different.

Q. You mean in your opinion there is a material difference between the syllabus in one book and that of the other?

A. Yes, sir.

Q. Turn to page 23, volume 45, Stever *vs.* Mitchell, and compare the second paragraph of the syllabus in Freeman's book with the second in defendants' book and state whether, in your opinion, they are similar or dissimilar.

A. There is a similarity; they are not exactly alike, but substantially so.

Q. Is the similarity greater or less than the cases in regard to which you testified on your direct examination?

A. I think I have noticed some as great as that.

Q. Turn to page 207, vol. 46; examine the syllabus, and compare the statement of facts in the two volumes and state whether or not they are similar, in your opinion.

A. What you have asked me to do is in reference, not to statement of facts, but a claim which the courts say was brought as ground for a rehearing, and the statements made on that matter in the two volumes are essentially the same.

Q. It is a statement, is it not, by the reporter of a fact?

A. Yes, sir.

Q. Now, state whether that statement is or is not copied into
1088 the book of defendant- or whether it is different.

A. It is not exactly copied.

Q. Is there an essential difference, in your opinion?

A. No, sir.

Q. Look at page 250, vol. 42, last paragraph but one on the page; does that contain a statement of fact by the reporter in Freeman's book?

A. Yes, sir.

Q. State whether the same statement is contained in the book of defendant-.

A. There is, on page 250 of Freeman and on page 250 of Denslow, in a very long statement of facts, a statement of a fact in Freeman commencing "a trial was had by jury," and the statement of that fact in Freeman is essentially like that of that fact in Denslow. The statements in each case are contained in a very long statement of fact occupying 9 pages.

Q. Do you consider there is a similarity between the particular statements I have called your attention to or not?

A. I consider there is a similarity in the method of stating the particular fact commencing in each volume with the words "a trial was had by jury."

Q. Take vol. 41, page 271, and compare the statement of fact in the case of Cleary *vs.* Babcock and state whether the statements are similar or dissimilar.

A. I consider there is an essential difference.

1089 Q. Look at vol. 39, page 24, and compare the syllabus and tell me whether, in your opinion, they are essentially alike or essentially different. I wish to direct your attention particularly to the 1st paragraph of the syllabus.

A. The 1st paragraph of division No. 1 of the syllabus in Freeman is like the 1st paragraph of that portion of the syllabus in Bailey's which is under the head of "contract." They are *no* numbered 1, 2, etc. The remaining portion of syllabus No. 1 in Freeman is somewhat similar to the remaining portion of that portion of the syllabus in Bailey under the head of contracts.

Q. Would you consider there was an essential difference in the syllabi of the two books?

A. If you mean by that the entire syllabi in the two books I say yes.

Q. I will ask you, then, whether there is an essential difference between the syllabus in each book in the first paragraph, the 1st division?

A. There is such an essential difference as to indicate to any one upon first reading of each that one had been copied from the other.

Q. Now turn to page 407, Brown *vs.* People of State of Illinois, and compare the syllabi and state whether they are similar or dissimilar, in your opinion.

A. They are quite similar, but they are not alike.

Q. Is there any essential difference?

1090 A. No; I do not think there is, although there is considerable difference; but the manner of stating in the one case is quite similar to the manner of stating in the other. I have not examined the opinion, but it would seem to me from a similar likeness I have found in other cases that the syllabus in each case was taken from the opinion of the court.

Q. Could you say from an examination of the syllabi one had been copied from the other?

A. Yes, sir; it is manifest that one was not copied from the other.

Q. What indicates that one has not been copied from the other; upon what do you base your opinion?

A. They are not read alike.

Q. Have you any other reason? If so, give it.

A. I have no reason, except they do not read alike; one contains words which the other omits, and the words are arranged in a different order.

Q. Look at page 9 of the same volume and examine the paragraph of the syllabus beginning with "judgments" and state whether or not they are similar, in your opinion.

A. I think they are essentially unlike.

Q. When you testified there was an essential difference in the method of stating the facts to what did you refer; did you refer to the statement of the facts involved in the case or the statement of facts made by the reporter of matters within his knowledge?

A. I suppose the reporter in any case states such facts as appear from the record, and I referred to such statement of facts as

1091 are made by the reporter in each case.

Q. You observe in looking over the volumes that there are many statements preceding the opinion of the facts involved in that particular case; there is also in each of the volumes statements made by the reporter as to where the cases have been tried, what judges have participated in the trial, how the cases were reported or inserted in the volume making two classes of statement of fact embraced in the volume. Did you intend in your statement to say that there was an essential difference between the two volumes in this regard to include both classes?

A. No, sir; I meant in reference to the statement of facts in the case on which the court has rendered its decision.

Q. In examining these volumes did you observe whether the arrangement of page was the same in the two volumes?

A. I did observe; it is not always the same.

Q. There is a difference made?

A. Yes, sir.

Q. Is there an essential difference in the arrangement?

A. Do you mean the order of the cases?

Q. In the order of the cases or the general arrangement is there any essential difference?

A. No; I am not aware there is.

Q. Do the cases appear in either volume according to the dates at which the decisions were rendered?

1092 A. I am not sure as to that; I never examined particularly as to that. The cases are in the same order, so far as I have observed, in each volume.

Q. Would not the value of the defendants' book be much less if they were not in the same order?

A. I should think it would.

Q. Then they could not be sold as Illinois Reports unless the same arrangement and paging was preserved as in Freeman's?

A. I think they could be sold as Illinois Reports, because they would be Illinois Reports whatever way the cases might be arranged, but I do not think they would be as valuable if a different order of cases had been made.

Q. Unless the paging of Mr. Freeman was preserved so any reference to the Illinois Report- would guide to the same case that he had placed there the value would be very much less, would it not?

A. Yes, sir; unless the paging was preserved, either at the top or margin, so you would find the same case in each set the value would not be as great.

Q. When did you purchase the books of the defendant-?

A. In 1877, I think it was, I purchased all that were out then, and from time to time as they came out.

Q. Can you fix the time when you bought them?

1093 A. No; I cannot. I suppose I could by referring to the bills as I paid for them.

Q. You purchased them all—37 to 46?

A. Yes, sir; except 40. I purchased that and paid for it 4 years ago.

Q. Did you ever see it?

A. No, sir.

Q. Defendants then sold you volume 40?

A. They sold me the entire series.

Q. Did they represent at that time it would contain all the volumes?

A. They did not represent they had them all at that time.

Q. They agreed to deliver them?

A. They agreed to give me a full set of Illinois Reports.

Mr. HIGH: How much time in all did you spend in this examination and comparison of these volumes—volume- 39 to 46?

A. I have made this special examination of which I have spoken, on, I think, four different occasions. My recollection is, on two of those I had a clerk assisting me. Take it altogether, the time I had devoted to it would be more than an entire working day.

Q. That is, the time spent in the necessary examination with a view of testifying in this case?

A. Yes, sir.

(Endorsed:) Filed April 17, 1882. W. H. Bradley, clerk.

1094 And thereupon defendant- read in evidence the deposition of F. Q. Ball, as follows:

In the Circuit Court of the United States for the Northern District of Illinois. In Chancery.

E. B. MYERS, Complainant,

vs.

CALLAGHAN *et al.*, Defendants.

Testimony taken before Henry W. Bishop, master in chancery of said court, Wednesday, the 28th day of December, A. D. 1881.

Present: Mr. Le Moyne, for complainant; Mr. High, for defendant-.

F. Q. BALL, a witness on behalf of the defendant-, being first duly sworn, was examined in chief by Mr. HIGH, and deposes and says as follows:

Q. Please state your name, age, residence, and occupation.

A. My name is Farlin Q. Ball; I reside in Chicago and have so resided for the last twelve years; I am a lawyer.

1095 Q. How long have you been engaged in the practice of law?

Q. Since the winter of '65–'66.

Q. How long in Chicago?

A. Twelve years.

Q. Are you familiar with the two editions of the Illinois Reports, vol's 39 & 40 to 46, inclusive, as published by the complainant, Mr. Myers, and by the defendants, Callaghan & Co., respectively?

A. I think I am fairly familiar with both editions; I have had access in office work to both for two years; I have used the old edition—the Myers addition—since 1869, and I have had at my house the Callaghan edition of which you have spoken, together with the balance of the Illinois Reports, for a year or more.

Q. State whether you have made any special examination of the Callaghan edition, volumes 39 and 40 to 46, inclusive, with reference to their similarity or dissimilarity, with the corresponding volumes of the Myers edition; if so, state the nature and extent of your examination and its result.

1096 A. I have compared the volumes from 39 to 46, inclusive, (excepting 40, which I understand was not issued by Callaghan & Co. I think I am right about that; at any rate, I have not found vol. 40 in their publications). I have spent at least three days in comparing the volumes spoken of. I suppose I have looked at 150 cases, at least, in those volumes.

Q. Do you mean that you have carefully examined 150 out of the whole number of volumes?

A. Out of the whole number of volumes spoken of. I mean by that that I have examined their points of similarity and dissimilarity without in all or in many cases reading the opinion of the

court, taking it for granted that the opinion of the court in the two sets of reports would be found to be alike. I have gone from the head-notes frequently to the opinion to see whether or not the language of the head-note was to be found in the opinion itself.

Q. Then do I understand that your examination has been
1097 confined specially to the comparison of the head-notes, statements of facts, briefs of counsel, and matters of that nature, without special comparison of the opinions?

A. Yes, that is what I intended to say. I remember but two instances where I found the opinions differed, but my general impression was that the opinions were alike.

Q. You made no special examination of them?

A. No special examination.

Q. What was the result of your examination in the comparison of head-notes, statements of facts, briefs of counsel, and any other matters; state fully in your own way.

A. The first thing that struck me as a difference in the two reports, and the reason why in purchasing a set for my house I took the Callaghan edition, is the system of foot-notes and references which is found in the Callaghan edition and not in the Myers edition. The general result of my examination of the syllabi led me to believe that those of the Callaghan edition were made from the opinion of the court itself. In many cases in the old edition I
1098 found no points of counsel—I mean in the Myers edition—I found no points of counsel, while in the Callaghan edition there would be points of counsel. In some cases I found points of counsel in the Myers edition and none in the Callaghan. In every instance, so far as I now remember, there was no copying of the points of counsel in the Callaghan edition from the Myers edition, although when it came to the citation of authorities by counsel I have frequently found, as one would expect, the same authorities cited.

Q. As one would expect from what?

A. From the fact that the authorities of counsel must have been taken from the briefs filed by them, and the points are nearly always supported by a citation of authorities.

Q. State whether in any instance you found the points of counsel more fully stated or additional and further citation of authorities in the Callaghan edition than in the Myers edition.

A. I have frequently found more authorities cited in the Callaghan edition than in the Myers edition, and in a few instances I found more in the Myers edition than in the Callaghan
1099 edition. In a single volume of reports there would be, I should think, a dozen or more additional pages of points of counsel in the Callaghan edition than in the Myers edition.

Q. And what was the result of your examination as regards the statement of facts of the two editions as reported?

A. They differed in the different volumes which I examined. In a number of instances—30 or 40, I should say—I found a statement of the facts of the case preceding the opinion in the Callaghan edition where there was none in the Myers edition, and in a few

instances I found that the Myers edition contained a statement of facts and the Callaghan edition had none.

Q. Did your examination or investigation indicate that the statement of facts in the Callaghan edition was copied from that in the Myers edition or taken from some other source?

Counsel for complainant objects to witness stating what it indicated.

A. I found no greater similarity than would exist between
1100 independent statements made by different attorneys of the same suit. I found no servile copying of the statement of facts as exhibited by Mr. Myers in the Callaghan edition.

Q. What was your conclusion, then, as to whether the statement of facts in the Callaghan edition were taken from the Myers edition or from some other source?

Objected to.

A. In some cases, at least, they must have been taken from some other source, because there is nothing to show, either in the Myers statement of facts or in the opinion of the court, what the facts were as stated in the Callaghan edition, and I saw nothing to indicate that the one had been taken from the other.

Q. In any case?

A. Not in any case, I believe.

Q. What was the result of your examination as to whether the statements of fact in the Callaghan edition did or did not contain facts which do not appear in the Myers edition?

A. In some cases the statement of facts in the Callaghan edition was more full than in the Myers edition, and, taking each
1101 volume as a whole, there were more pages of fact in the Callaghan edition than in the Myers.

Q. More pages of the statements of facts?

A. Yes.

Q. What was the result of your examination as regards similarity or dissimilarity in head-notes?

A. I found them as dissimilar as one could expect two lawyers to make up a syllabus of a given case.

Q. What did you find, if anything, as regards indications as to whether the Callaghan head-notes were taken from the Myers.

Objected to.

A. I found very little, and, in those cases which attracted my attention, upon turning to the opinion I found that both of the authors of the head-notes had taken their verbiage from the opinion.

Q. Do you mean to be understood that where you found a resemblance in the head-notes you discovered that each had apparently taken the head-note from the opinion of the court?

A. I did. There is one instance where the greatest simi-
1102 larity exists in the head-notes of the two authors. I found, upon a careful reading of the opinion, that each man had

followed the opinion and each man had taken almost all the opinion for the head-note.

Q. You spoke of two instances where you discovered some difference in the opinions in the two editions. Can you recollect those instances?

A. In the 43rd Illinois the case of Freeman *vs.* Brown, page 132, there is a correction in the opinion of the court as published by Mr. Myers, the correction being found in the Callaghan edition. The other case is where there was one opinion filed and the other recorded. Mr. Myers gave one opinion and Messrs. Callaghan both. That is the case of Dodds *vs.* The Board, etc., 43rd Illinois, page 95.

Q. You have spoken of examining about 150 cases in all in the seven volumes. Can you state about how many you examined in each volume?

A. In the 39th, 8; in the 41st, 6; in the 42nd, 58; in the 43rd I examined 57; 44th, 7; 45th, 13; 46th, 22.

Q. State whether the cases that you examined were selected
1103 by any particular method or in any special manner, or how.

A. In the 42nd and 43rd I commenced at the beginning of each volume and looked through to the index, and in those volumes I took or intended to take every important case. In the others I opened either the Myers or the Callaghan edition, looked at the case where I opened it, and, if it was a case of importance, examined it; if not, I turned either to the right or left to the first important case and took that, and after selecting it turned to the other edition for comparison. I found that to turn from the beginning to the end of each volume was taking more time than I felt able to spare. In other words, after the 42nd and 43d I left the selection of the cases to be compared largely to chance. I want to qualify that as to the 45th and 46th. My attention to the cases in those two reports was drawn by an examination of the Callaghan edition, and I found after I got through that I had taken a large majority of cases
1104 where there were foot-notes, and after striking a case with foot-notes then I compared the syllabi, points of counsel, and facts.

Q. State whether, in your selection of the cases for comparison, you had in view any apparent resemblance or difference to start with.

A. I had none; before I commenced the examination my only tangible idea of the difference between the two sets of reports was the fact that one had foot-notes and the other had not, and I have been in the habit for the last two years, when examining cases, if I got hold of Mr. Myers' edition and was not thoroughly satisfied with the case, as to its being in point, &c., to step to the new edition and see if there were not some notes to that case or some reference, and that was the only particular difference I knew to exist until I commenced this examination. I had heard, as I suppose every lawyer in the city has heard, various rumors about differences, first in favor of one and then in favor of the other, but I had no knowledge of what they were.

Q. Aside from this examination?

A. Other than that of the foot-notes.

1105 Q. As the result of this examination, what do you say as to the comparative value of the respective editions?

A. I very much prefer the Callaghan edition of those volumes.

Q. State whether, in your judgment, an ordinary purchaser of the Illinois Reports of average intelligence, would be likely to mistake one edition for the other, or to buy the Callaghan volumes under the belief that he was buying the Myers volumes.

A. I don't see how any lawyer could make that mistake.

Q. How recently was this special examination made?

A. Within the last three weeks.

Cross-examination by Mr. LE MOYNE:

Q. Mr. Ball, at whose request was this examination made?

A. At the request of Mr. High; he did not express any other purpose than that he desired me to look at the two editions to see their points of similarity and dissimilarity, and stated that he would probably call me as a witness.

1106 Q. Did you report to him the result of your examination?

A. I did not.

Q. And did you state to him how you found them—similar or dissimilar?

A. I don't think I did, I have seen him, I think, once on the street—possibly twice—but for a moment only, and I don't remember to have said a word to him about it.

Q. Did you tell Mr. Callaghan about it?

A. I don't think I have.

Q. Have you told any one?

A. The clerk who helped me compare some of the cases—a young lawyer in my office. He read or I read, and we would discuss the case we were upon from time to time.

Q. That is the only person to whom you had indicated the result of your examination or your opinion?

A. Unless it be that I said something to Mr. High, of which I have no present remembrance. He asked me once how far I had got along, and whether I told him any more than that or not I don't know. At that time I was about half way through the examination.

Q. You knew the question at issue between the parties here, didn't you?

1107 A. I knew that the two parties were litigating, and knew generally—as every lawyer in the city knew—the subject-matter at issue.

Q. You knew it was claimed on the part of Mr. Myers that those books—the Callaghan edition—were published and copied from his edition?

A. That was my understanding of the suit.

Q. And when Mr. High told you to make this examination you understood that it was for the purpose of testifying there was a definite difference, did you not?

A. Well, I should infer that that was what he wanted me to do. If I had found an extreme similarity I would have told Mr. High before testifying.

Q. Before testifying?

A. Yes; so that he might have called me or not.

Q. You don't know how many other persons have examined these at Mr. High's suggestion or not?

A. No, sir; I do not. I have heard of one other person.

Q. Have you been acting as attorney for the defendants in other matters?

A. In some matters I have acted for them. Our firm has, and therefore I have.

1108 Q. In examining the two books did you find a similarity in the paging?

A. There was a similarity, and I believe an identity of side paging. What I mean by that is that the Myers top paging was carried on the side of the Callaghan edition.

Q. Well, does the Callaghan edition have top paging of its own?

A. It had a bottom paging of its own.

Q. How is it with the top paging?

A. I say the top paging of the Myers edition was carried on the side of the Callaghan edition.

Q. Has the Callaghan edition no top paging?

A. Certainly.

Q. Is it the top paging of the Myers edition or of their own?

A. It conforms to it on the side paging; for instance, if in the Callaghan edition, in vol. 39, at page 100, if the opinion of the court—I only give this as an illustration; I don't know that it is a fact—should come in the middle of a page of the Myers edition there would be a star page in the Callaghan edition, and then the same paging would be carried over.

1109 Q. Now, you don't mean to say that the Myers edition has no star paging, do you?

A. I do; it has not.

Q. What you mean by star paging is the side paging of the Callaghan edition, is it not; isn't that what you call the star paging?

A. Yes.

Q. And the star paging in the Callaghan edition is or is it not the same as the top paging of the Myers edition?

A. The star paging of the Callaghan edition is the same as the top paging of the Myers edition, as I have already said; that star page agrees, so far as I have examined, with the top page of the Myers edition.

Q. Isn't there a similarity in the arrangement of the two books?

A. The cases follow each other—that is, there is the same arrangement of cases in the Callaghan edition as in the Myers edition, so far as I saw. I have no reason to believe that it is otherwise.

Q. I understood you to say that prior to this critical examination you made you had supposed the Callaghan edition was like the Myers edition?

A. No, sir.

Q. What did you say in that regard?

1110 A. I said that the only tangible difference I had any knowledge of was in regard to the foot-notes in the Callaghan edition.

Q. What do you mean by tangible difference?

A. The only difference to which my attention had been called. I did not know whether they were similar or dissimilar up to that time.

Q. How long had you used both books up to that time?

A. We had had in our office the old set, as we call it, the Meyers edition, and in Mr. Bisbee's office, which opens into ours, there has been the Callaghan edition for two years.

Q. And you made this examination within the last three weeks?

A. Yes.

Q. And you had used these books without discovering any tangible difference, except the foot-notes?

A. Ordinarily I used ours, but whenever I wanted to see if there were foot-notes I went into Mr. Bisbee's and picked his up to see if there were any foot-notes, and my attention was directed to the foot-notes if there were any.

Q. Didn't I understand you to say you had a copy of the Callaghan books at your house?

1111 A. I have.

Q. How long have you had them?

A. For a year or more. I have a little law library at the house for convenience of reference.

Q. Your examination, as I understand it, made lately for differences was confined to an examination of the syllabus, statements of fact, and points of counsel; was there any other part of the books examined; and, if so, what?

A. I didn't look at anything, except in a few cases where I desired to see whether a similarity in the syllabus came from the opinion itself.

Q. When you say you examined the statements of facts do you mean the statements made by the reporter of the facts involved in the case or the statements contained in the volume of the facts that would appear on the record?

A. I simply looked at the statements as made by the reporter which precedes the opinion of the court.

Q. I wish to call your attention to this fact, that in many cases there is a statement of the facts involved in the case, and in other cases, perhaps in the same case, there are statements of other

1112 facts which would appear from the record in regard to proceedings of the court, either the supreme court or the court below. Now, which of those statements was your comparison made in regard to?

A. Ordinarily I did not pass beyond the opinion of the court. In both editions the reporter would sometimes state that the facts were sufficiently set forth in the opinion of the court, but I did not pass on to see what the facts were.

Adjourned to Thursday, December 29, 1881, 1.30 p. m.

And thereupon defendants read in evidence the deposition of F. Q. Ball on further cross-examination as follows:

1113 Testimony taken before Henry W. Bishop, Thursday, Dec. 29, 1881.

Present: Mr. Le Moyne, for complainant, and Mr. High, for defendants.

F. Q. BALL, for defendants, was further cross-examined by Mr. LE MOYNE:

The WITNESS: After I left the room yesterday I recollected that Mr. High was in my office after I commenced my examination, and I showed him at that time the corrections in the opinion, about which I had testified yesterday, and the additional opinion, of which I also spoke. I do not yet remember that anything was said at that interview about what I had found out in relation to these reports.

Mr. LE MOYNE:

Q. In making the examination of the two books you say that the dissimilarity observed by you was in the statement of the facts and syllabi. Do I understand you compared these with the opinion in the particular case?

A. In some cases I did, but not in many. That does not
1114 indicate all the points of difference which I noticed between the two editions. Besides the statement of facts made by the respective reporters and the head-notes I notice differences in relation to the presence or absence of points of counsel in the different editions and the presence of many foot-notes in the Callaghan edition which were wholly wanting in the Myers edition.

Q. When you testified that you saw no similarity between the syllabi prepared by the official reporter, Mr. Freeman, and by the person who prepared Mr. Callaghan's report, except such similarity as would arise from statements made of the same opinion by two different persons, you could only make this statement if you had compared with the opinion itself the syllabus in each particular case; is not that so?

A. Whenever I found a similarity between the two syllabi I went then to the opinion to ascertain from it whether or not the similarity was not taken from the language of the opinion. I think in most, if not all, of the other cases I did not go to the opinion.

1115 Q. You intended, of course, then, to make this statement only in regard to the cases where you had examined the opinion and compared the syllabus with the statement of the court?

A. No; I intended to have it apply to all the cases where I examined the syllabi. I assumed where they referred to the same subject-matter that the two were based upon the opinion itself, and unless I noted a similarity which ought to be or would be accounted for, either from the one reporter following the other or from the language of the report, I turned to the opinion to see if that language was in the opinion.

Q. When you say there is an essential difference between the statements of fact in the volumes of the complainant and defendant- do you intend that to apply to all that appears in the book between the head-notes and the opinion?

A. Excepting the points of counsel, yes, sir; and apply, of course, to the cases which I examined.

Q. Look at vol. 39, page 44, Ranney *v.* Boyd, and observe the statement made in the first two lines below the head-note.

1116 A. It reads, "Error to Richmond, Andrew Shaw, J.," meaning error to Richmond Co., Andrew Shaw, judge.

Q. Does your testimony refer to that as a statement of fact, and is it included in your statement that there was a dissimilarity between the books?

A. I did not consider that a portion of the statement of facts made by the reporter. The next line, which reads, "The facts are stated in the opinion," upon my seeing that, would have caused me to pass over any question of statement of facts.

Q. Also observe in the same case, on the third line, the names of counsel are given. Is that included in your testimony in regard to the dissimilarity of the two?

A. I did not include that in my examination.

Q. Then do I understand, when you say there was a difference in the statements of fact, you mean it to apply to what the reporter stated were the facts in which the case was based, or did it include more?

A. My examination only run to what the reporter stated as the facts of the case.

1117 Q. These several statements that precede the opinion, following the heading of it, were not included in your examination other than the statement of facts?

A. If you mean as to the county from which the case came, the judge before whom it was tried, and the names of counsel for appellant and appellee my examination did not include them, and I do not know whether they are similar or dissimilar.

Q. Were there any foot-notes in the volume that you examined of Myers, vol. 39?

A. I think in almost every volume of Mr. Myers there is occasionally a foot-note.

Q. Were these foot-notes copied or not by the defendant-?

A. I did not notice an instance where they were.

Q. Did you make any comparison of the title pages or the pages following the title pages to see if the books were similar or dissimilar?

A. I did not.

Q. Did you make any examination of the table of cases?

A. I did not. As to the title page I ought to say while I

1118 made no examination in this case I am aware of the difference. The name of the reporter is different and the publisher is different in the two editions, but I did not examine as to that point recently.

Q. Look at volume 41, page 86 and following, and state whether

or not there is a similarity in the statement of facts in the two books. If there is a similarity state whether the material in the defendants' book is contained in the opinion.

A. I find in each of these statements of facts certain papers copied apparently in full are quoted. Where Denslow, the reporter of the Callaghan edition, got his quotation I do not know.

Q. Is that one of the cases you had examined?

A. It is not. The character of the corporation defendant is also stated in each of them in quotation marks. It does not seem to me that the balance is more like in the two than two lawyers would be apt to make them, each having the record of the case before him.

Q. That would be, then, an illustration of what you have
1119 said, that the statements when similar are not more similar than would be made by two lawyers preparing the statements from the same matter?

A. Having the same matter to make the statements from.

Q. Look at page 222, same volume, Fox *v.* Bracket. Is that one of the cases you have examined?

A. It is.

Q. Look at the statement of the case and state whether there is a similarity or not, in your opinion.

A. I have read the statements of facts in both. I do not think they are more like than two reporters would be likely to get them in stating the facts from the papers and records of the case.

Q. Now, look at page 229 of the same volume and compare the first paragraph in Freeman's report with the statement of the reporter in the defendants' book, and state whether or not you consider the two statements similar or dissimilar.

A. I think they are as dissimilar as they could well be when the same evidence was before each one. In other words, if neither edition of this report was in existence and two men sat down
1120 independently to state the nature of the case, I think that they would come as near a similarity as there is here.

Q. Do you think they would be liable to use as many words and sentences in common as there are there?

A. Yes; I do not see why they should not.

Q. State whether after a comparison, in your opinion, all that is contained in the Callaghan book could not be obtained from the other book?

A. It could be all obtained from the other book.

Q. Every word of it?

A. Certainly; it is in substance in each.

Q. Did you say you did not observe any foot-notes were copied?

A. I answered I did not.

Q. Look at page 197 of the same volume and examine the notes given in the two books.

A. In the Myers edition, at the foot of page 197, is "See Elston *et al. v.* City of Chicago, 40 Ill., 514, as to what will be regarded as a compulsory payment." On the same page of the Callaghan edition I find at the bottom as a foot-note: "NOTE.—See Elston *et al.*
1121 *v.* City of Chicago, 40 Ill., 514."

Q. You did not observe that in your examination before?

A. I had not.

Q. Look at volume 42, page 212, and state whether the statements of fact, beginning with the words "subsequent to filing of the foregoing" are similar or not.

A. I find in each the assertion after the foregoing opinion was filed, the defendants in error moved for a rehearing, which was refused, and that the grounds of the motion appear in the opinion following. These two paragraphs are somewhat similar, but with the record before each reporter I think the same similarity would probably have existed. There is a greater similarity between these two paragraphs than in any that has been shown me before.

Q. Was this one of the cases you had examined before?

A. I believe not.

Q. Turn to page 231 of the same book and compare the statement of the points of counsel, beginning "Mr. H. M. Chase," and state whether or not there is a similarity between those two.

1122 A. In each it is stated that Mr. Chase cited Nichols *v.* McEwen, 17 N. Y. The Callaghan edition marked the statement in a line and a half. The Myers edition in 4½ lines. I think they are dissimilar. Each reporter, however, says there were other authorities cited.

Q. Do you think there is such a dissimilarity as would result from the one book being made independent of the other, or not?

A. The only similarity, to my mind, is the citation of the same case; that may have been the important case in the mind of each of the reporters. I do not know whether it was or not.

Q. Look at the citation of authorities in the same case of counsel of appellants. Is there a similarity there between the two books, in your opinion, or not?

A. They cite the same cases.

Q. The citations are the same?

A. The citations are the same. In the Myers edition it is preceded by a statement of the point, which is lacking in the Callaghan edition, but the same authorities are cited by each reporter.

1123 Q. Is not the only difference between the two that in the Callaghan book the statement of the point is omitted by the defendant?

A. That is a difference.

Q. Look at page 250 of the same volume, Rounds *v.* Smith, and state whether that is one of the cases you examined.

A. It is not.

Q. In the two books compare the 15 lines commencing "A trial was had by jury," and state whether in your opinion they are similar or dissimilar.

A. They are similar, but might well have been written independently by two different men having the records before them.

Q. You do not think having them so near alike would be rather a strange coincidence, do you, if one was not copied from the other?

A. It would be strange if two men sitting down with the same record to write the syllabi, points of counsel, and facts of the

cases contained in a volume of reports should not strike one or more points where the language was very much alike.

Q. I am only asking you about this particular similarity.

1124 A. The similarity is marked enough to create a suspicion that the second reporter might have had the first volumes before him, and yet, as I said before, that similarity would undoubtedly be discovered in more than one passage in the same volume of cases where the reporters were working entirely independent of each other.

Q. Take volume 41 and compare the head-notes on page 382, numbers 1 and 2 of Freeman with No. 1 of Denslow, and state whether they are similar or dissimilar. Is that one of the cases you have examined?

A. It is not; I think they are dissimilar. Where the similarity exists at all it is found to have been taken by both of the reporters directly from the opinion.

Q. Give the part of the opinion where you find the sentence contained in the syllabus?

A. In Freeman the first paragraph is, "The general doctrine is, when a party has a defence to an action at law known to him and he fails to make it no court can relieve him." In the Callaghan edition, "This supersedes the general rule of law, when the

1125 party has a defence to an action at law known to him and he fails to make it no court can relieve him." In the opinion of the court I find these words, "We concur in the general doctrine, always enforced in this court, that when a party has a defence to an action at law known to him and he fails to make it no court can relieve him." The balance of the two syllabi are as dissimilar as can well be.

Q. Look at volume 42, page 457, Jariad *v.* Haffer, and compare the syllabus in Freeman with that in defendants' book and state whether, in your opinion, they are similar or dissimilar.

A. While the idea is the same in each of the syllabi the wording of each is different from the other. Taking them as a whole, they are dissimilar.

Q. Is this a fair sample of what you have testified as to the dissimilarity in the head-notes in the two books?

A. I cannot state whether it is or not, but it seems to me these are as dissimilar as two men would naturally make the head-notes of the same case. I really do not see how two men would get further apart in stating the same points of law from so short an opinion.

Adjourned to 2 p. m., Dec. 30th, 1881.

1126 FRIDAY, *Dec. 30th*, 1881.

Met pursuant to adjournment.

Present: Same as before.

F. Q. BALL, a witness for defendant-, being first duly sworn, was further cross-examined:

Q. Look at vol. 44, page 74, Chicago & Northwestern — *vs.* Dement, and state whether, in your opinion, there is a similarity or not in the 1st section of the syllabus.

A. The first paragraphs of the syllabus in each of these cases are somewhat alike, but they are both taken substantially from the opinion of the court and are not more alike than might be the case where the second reporter had not seen the syllabus of the first.

Q. Is there a similarity?

A. There is a similarity.

Q. You say that is taken from the opinion. Will you give the number of the line in the opinion where you find this statement contained in the head-note referred to?

A. In the Myers edition, commencing on page 76, two and a half lines from the top, and from there down six lines to the bot-
1127 tom of the paragraph is a substantial statement by the court of the syllabus in each edition.

Q. Is this one of the cases you had examined before?

A. It is not.

Q. In your opinion, then, the similarity that you find in those syllabi is not greater than might be or would generally be made by two persons making the syllabus from the same opinion, each without seeing the other?

A. No greater than might be.

Q. You say might be or would probably be?

A. Each statement is a short statement of the opinion of the court in that particular, and each is expressed in a clear manner, and in doing so they have both used some of the same words and expressions.

Q. Have you observed how many of the same words are used?

A. There are quite a number of the same words used, but the arrangement is different in the two, and those same words are in the seven lines of the opinion to which I have referred.

Q. Is this case a fair sample of the cases you have named
1128 as being either dissimilar or taken both from the opinion of the court?

A. It is not a fair sample of the dissimilarity of the syllabi as determined by the cases which I examined, nor do I find in either syllabi that the exact language and arrangement of words used in the opinion has been followed.

Q. Are not the words and the arrangement in the syllabus of the defendant more similar to the syllabus in the Freeman book than to the words of the opinion?

A. I do not think so. In each of these paragraphs of the syllabi I find that nearly every word is taken from the opinion of the court. I do not mean by that the arrangement of the words, but almost all the words in each are to be found in the opinion, and within that seven lines to which I have referred. In Freeman's the head-notes start: "Although the correctness of the verdict may be doubtful." In Callaghan the statement starts: "Although the appellate court may be doubtful of the correctness of the finding of the jury." In the opinion I find: "And although doubtful of the correctness of their finding." And so all through each of these statements
1129 the opinion appears.

Q. You say this is not a fair sample; do you mean to say,

in the cases you testified in regard to in the direct examination, you did not find any cases in which there was so much similarity as in this case?

A. I found cases where the similarity was greater. I found some cases where the language used by both was identical, but in these cases I found, without an exception, that each of the reporters had gone to the opinion and copied *verbatim* from the opinion of the court. Neither of these is an exact copy of the language of the court and are nearer alike than those I examined where the reporter had not followed the opinion.

Q. You mean nearer alike than any you examined or the majority of them?

A. Than any I remember.

Q. Look at volume 45, the case of Reed *vs.* Hawley, and state whether, in your opinion, they are similar or not in the arrangement of the syllabus and in the catch-words?

A. The syllabus in each edition consists of two paragraphs.

1130 The catch-words at the beginning of the first paragraph in each consist, first, of the words "Forcible detainer" in capitals; then, in the Myers edition, in italics, "lies against a sub-lessee holding over after termination of original lease;" in the Callaghan edition is italics "when it lies against a sub-lessee."

Q. I ask you if there is a similarity; can you state whether, in your opinion, there is a similarity between the arrangement of the syllabus and the catch-words used in the two books?

A. I do not think there is any more of a similarity than would follow the making of the head-notes of a case of that length by two independent reporters.

Q. The syllabus in each book is divided into the same number of paragraph, is it not?

A. I have stated so.

Q. And the first is "forcible detainer" in each and the second the same, is it not?

A. The principal words of the catch-words are as you have stated them, but the italicised words following the principal word or words in capitals differ.

1131 Q. Now read the paragraph No. 2 in each book and state whether, in your opinion, the paragraphs are similar or not. I am not asking you where they came from, but whether, in your opinion, they are similar.

A. Ommitting the words quoted, "for Cyrus M. Hawley, by William C. Prouty, our authorized agent," I do not think they are similar.

Q. Is this one of the cases you have examined?

A. It is not.

Q. Is that a fair sample of the dissimilarity you have stated you found in the comparison of the books?

A. This is nearer a fair instance than the last one to which my attention was directed.

Q. Can you say it is a fair sample or not?

A. It is hardly a fair sample of those I examined; the similarity

is nearer than the average. I would say that the first paragraph of each of these syllabi is taken largely from the opinion of the court. In the Callaghan edition the paragraph is, "Under the statute if a sub-lessee holds over after the termination of the original lease an action of forcible detainer lies against him." The fourth
1132 paragraph of the opinion commences, "Under our statue if a sub-lessee holds over after the termination of the original lease he is liable to this summary proceeding." The second paragraph of the Callaghan edition is, "Where a notice to quit was signed for Cyrus M. Hawley, by William C. Prouty, an authorized agent, held that, although it would have been more proper to have said his authorized agent, it was substantially good." The court in the last say, "Upon the point that the notice is not sufficient, not being signed with the name of the appellee, it appears to be signed for Cyrus M. Hawley, by William C. Prouty, an authorized agent, it would have been more proper to have said his authorized agent, but it was substantially good." Taking the opinion of the court into account, I do not think that there is any suspicion of copying by the second editor fairly to be drawn from the similarity of the two.

Q. Have I asked you about any suspicion?

A. Not in direct words, but I thought I was to answer as
1133 to whether or not I thought there was a copying; if you object to the answer it may be stricken out.

Q. Since you have examined the opinion and found the syllabus was substantially in the opinion have you changed your opinion any as to the similarity of the two?

A. I think the similarity of the two is to be accounted for by the words that are in the opinion.

Q. Then you think there is a similarity in the syllabus of the two books?

A. I said so when it was first shown me.

Q. In your experience have you ever known two publications of the same volume of the same report by different persons?

A. There are a good many sets of reports or parts of sets of reports that have been edited by two or more authors. My attention never was directed to the similarity or dissimilarity of the different sets until now in this case.

Q. Do you know anywhere the same cases appear in the same order and the same arrangement is followed? If so, name the reports.

A. As I stated before, my attention never was called to any other instance than this one.

Q. This is the only one you know of, then?

A. It is the only one I know of in the sense of having a
1134 knowledge of differences or similarities; I do not know. There are different editions or quite a number of sets or parts of sets of reports.

Q. What reports?

A. A great many of the English reports are doubly edited, and some of them more.

Q. Name any other you know of.

A. Curtis contains the earlier United States Reports. The first twenty volumes of Massachusetts have been re-edited, and there are quite a number of New York Reports, the earlier volumes, which have been re-edited and notes attached. The Wisconsin Reports have been re-edited in part, and I think some of the Iowa. The earlier Pennsylvania Reports have been republished with notes.

Q. Have these republications been made, to your knowledge, under the same description as the original ones?

A. I cannot answer that; I do not know. I know of the existence of different editions, but I do not know as to their similarities or dissimilarities.

1135 Q. You have stated that a person would not be likely to make a mistake in buying the books of the defendants for the books of complainant, but would a person that was not familiar with the Illinois Reports and who did not know that there were two issues of the same volume know the difference between them—know whether he was buying the reports made by the official reporters or the ones published afterwards? How would he know the difference?

A. If he did not know there were two sets of reports he could not well know it, but I do not see how a mistake could be made by a lawyer. The title pages are different, the publisher is different, and the copyright is different, and the moment an attorney opened the Callaghan edition he would notice the existence of foot-notes.

Q. All these differences are apparent only on a comparison of the two books, are they not?

A. Except as to the foot-notes; that would be shown by taking up the Callaghan edition, and the moment a lawyer saw the foot-notes he would make up his mind it was not the original edition as first published.

1136 Q. He would not know it was not a reissue by the regular reporter, would he?

A. If you excluded from him all outside knowledge he would not, of course. I find from the title page of this volume 45, after stating where the opinions are from and who does the work, it says: "Being the same cases reported in volume 45 of the series of the Illinois Reports by the official reporter." If he reads that he would know it was not the original edition or an edition by the official reporter.

Mr. HIGH: In which edition do you find that?

Mr. LE MOYNE: I object to the counsel asking any questions during my examination of the witness and to the witness answering any such question.

Mr. HIGH: I insist on an answer to my question.

Mr. LE MOYNE: You mean, then, by a critical examination he might discover that that was not the edition prepared by the regular reporter.

Mr. HIGH: I desire the witness to answer my question.

1137 A. No; I do not mean that; I referred to the title page of vol. 45 of the Callaghan edition only for the purpose of showing that there was absolute information on the face of the title page itself that it was not the original edition. I think any lawyer would

know, upon looking at the Callaghan edition—at least would suspect—that it was not the original edition or published by the original reporter. At any rate, he would, or I would, upon taking up a work like this, turn to the title page to see who had re-edited the original, and I think what I would do under these circumstances would be what an ordinary lawyer would do.

Q. Then you mean to say, in your opinion, a person who had no knowledge that there were two issues of the Illinois Reports would not buy the edition by the defendants, supposing it was the edition prepared by the regular reporter?

A. If you mean by the word person a lawyer who would use the books after he bought them I do not think that he would be
1138 deceived upon an inspection of the Callaghan edition into buying it for an original edition.

Q. You think a lawyer would buy both editions for ordinary use?

A. No, sir; he would not, unless he was richer than the average of the profession.

Q. In your opinion, would one take the place of the other?

A. I do not know that one would take the place of the other. I think they would both be used.

Q. Would a lawyer who had one ordinarily buy the other?

A. I don't think he would.

Redirect examination:

Q. State whether you find anything in the printed title on the back of the printed volumes of the Callaghan edition which would indicate to an ordinary purchaser a difference in the two editions.

A. I do. In Myers' edition, below the number of the volume, is the word "Freeman," evidently referring to the official reporter. In the Callaghan edition, below the number of the volume, is the name "Ewell," "Denslow," "Bailey," or, possibly, some other name, indicating apparently the name of the party who prepared the respective volumes.

1139 Q. Would or would not that fact indicate a difference to the ordinary purchaser as the books stand on the shelves or are presented to him in the store?

A. It would to a lawyer.

Q. What effect, in your judgment, would the star paging in the Callaghan edition have as regards furnishing an average lawyer purchasing the volume information as to the difference in the two editions?

A. It would show that it was at least a new edition, if not another edition, of the reports.

Q. State whether, in your judgment, the legal profession would or would not be likely to learn speedily after the publication of the Callaghan edition that there were two different editions upon the market.

A. I think the average lawyer would soon learn that, and, in my opinion, the active lawyer knows very speedily of every edition of any of the reports which he uses.

Mr. LE MOYNE: How would the name on the back of the book "Denslow," "Ewell," etc., indicate that it was not the official report if he did not know the name of the official reporter?

1140 A. A mere inspection of the back would give him no information in that case.

Q. When you said the name on the back would indicate the difference you meant to one who knew the name of the official reporter, didn't you?

A. My answer was based on that supposition.

Mr. HIGH: Would not the title pages of the different volumes of the Callaghan edition at once indicate it was another and different edition from that by the official reporter?

A. I have looked at the title page of some half dozen of the volumes we have been speaking of and find that the title page of each does show the fact that they are not the volumes published by the original reporter.

FARLIN Q. BALL.

Subscribed and sworn to before me this 30th day of December, 1881.

HENRY W. BISHOP,
Master in Chancery of the Circuit Court of the United States for the Northern District of Illinois.

And thereupon defendants read in evidence the deposition of John L. Pearson as follows:

1141 Testimony taken before Henry W. Bishop, Friday, Dec. 30th, 1881.

Present: Same as before.

JOHN L. PEARSON, a witness for defendant-, being first duly sworn was examined in chief by Mr. HIGH, and deposes and says as follows:

Q. Please state your name, age, residence, and occupation.

A. My name is John L. Pearson; I am 23 years of age; live in Chicago, and am studying law.

Q. Engaged as a clerk in my office?

A. Yes, sir.

Q. State whether you have recently made an examination of volume- 39 and 41 to 46, inclusive, of the Illinois Reports as published by complainant Myers and the corresponding volumes as published by the defendants, Callaghan & Co., with reference to the number of pages and amount of original matter contained in the respective editions.

A. I have.

Q. Look at the paper now shown you and state if that is the result of such examination.

A. That is the result of the examination I made.

1142 Mr. HIGH: I offer in evidence the statement in question, to be marked Exhibit A to the deposition of John L. Pearson.

Objected to.

Q. Please explain this exhibit with reference to the different columns, beginning with the first.

A. The first column represents the number of the volume as published by both Myers and Callaghan; the second column the number of head-notes in each volume of the edition; the third column the number of pages of head-notes and foot-notes in each volume of each edition; the fourth column gives the number of cases with statements of fact in each volume of each edition; the next column gives the pages of statements of facts in each volume of each edition; the next column the number of cases with arguments of counsel in each volume of each edition; the next column gives the number of pages of arguments of counsel in each volume of each edition; the next column is the pages of index in each volume of each edition, and the last column gives the total number of original pages in each volume of each edition.

1143 Q. I observe the third column is headed "pages of head-notes and foot-notes;" why did you include the head-notes and foot-notes together in thus stating the number of pages?

A. Because in counting the pages of original matter the foot-notes under the head-notes refer to the head-notes, and the foot-notes were original matter as well as the head-notes.

Q. Do you mean that you found the foot-notes generally accompanying or referring to the head-notes?

A. Yes, sir.

Q. Were there letters or figures indicating their connection with or reference to the head-notes?

A. I noticed the figures were given in one edition; I have forgotten whether they were given in both or not.

Q. In which edition did you notice the figures?

A. In the Callaghan edition.

Q. State whether as the result of your examination you found more or less original matter in the Callaghan edition than in the Myers edition.

A. The result of the examination, which is shown by the last table on the exhibit, shows that the Callaghan edition has more
1144 original matter in it than the Myers edition in the total number of original pages.

Q. Did you find in any cases that there were more pages of original matter in the Myers edition than in the Callaghan edition; if so, how have you indicated that in such instances?

A. I did find in some of the cases that the original matter in the Myers edition was more than the original matter in the Callaghan edition, and in all such instances I have indicated it by a minus sign placed before the figures in the table.

Q. Then in these instances in the last table on the page where the minus sign appears before the figures do you mean that indicates an excess in the Myers edition over the Callaghan?

A. This represents the excess in that volume.

Q. As to the particular matter in the column?

A. Yes, sir.

Q. In all instances where that minus sign does not appear in that last table what is the fact as to which edition contains the excess of original matter?

A. Where it does not appear it means that the Callaghan
1145 edition has that number of pages in excess of the Myers edition.

Q. As to the particular matter in that column?

A. Yes, sir.

Q. How much time did you spend in making this examination and in preparing this statement.

A. I think I was almost two weeks. Sometimes I was interrupted, but was working most of the time pretty steadily. I think I began Wednesday or Thursday of one week & finished the latter part of the next week.

Q. With some interruptions for other work?

A. Yes, sir.

Q. State whether this exhibit is a correct statement of the result of that examination as to the number of pages and amount of original matter in the two editions.

Objected to.

A. It is a correct statement of the result I obtained.

Cross-examination by Mr. LE MOYNE:

Q. What do you call original matter?

A. I call original matter the head-notes, the notes under
1146 the head-notes, and the statement of facts of the case and the arguments of counsel and the index.

Q. Did you include the table of cases?

A. No, sir; I did not include that.

Q. Title page?

A. No, sir.

Q. Who told you what to include under the head of original matter?

A. Mr. High.

Adjourned to 10 o'clock a. m., Saturday, Dec. 31, '81.

1147 EXHIBIT A to Deposition of J. L. Pearson.

Volume.	Number of head-notes.	Pages of head-notes and foot-notes.	Number of cases with statements of fact.	Pages of statements of fact.	No. of cases with arguments of counsel.	Pages of arguments of counsel.	Pages of index.	Total original pages.
Myers' edition:								
XXXIX	554	64	45	88	25	57	94	303
XLI	431	52	73	64	13	22	95	233
XLII	414	63	52	65	17	31	80	239
XLIII	489	58	68	50	9	13	91	212
XLIV	436	53	50	49	8	15	83	200
XLV	444	47	63	37	2	3	74	161
XLVI	415	43	39	26	0	0	73	142
Callaghan edition:								
XXXIX	575	91	50	88	45	54	93	326
XLI	453	130	70	53	37	20	110	313
XLII	406	92	62	77	57	78	89	336
XLIII	479	97	77	81	53	42	100	320
XLIV	457	190	47	61	56	35	80	366
XLV	457	113	51	45	24	18	98	274
XLVI	417	134	55	60	48	42	85	321
Excess in Callaghan edition:								
XXXIX	21	27	5	0	20	—3	—1	23
XLI	22	78	—3	—11	24	—2	15	80
XLII	—8	29	10	12	40	47	9	97
XLIII	—10	39	9	31	44	29	9	108
XLIV	21	137	—3	12	48	20	—3	166
XLV	13	66	—12	8	22	15	24	113
XLVI	2	91	16	34	48	42	12	179

1148 *Testimony in Behalf of Complainant as to the Infringement of Volume 40 Embraced in Supplemental Bill.*

And thereupon complainant, to maintain the issues upon his part as to the infringment of volume 40 of the Illinois Reports, embraced in the supplemental bill, read in evidence the following depositions:

And thereupon complainant read in evidence the depositions of Levi H. Goodrich, A. J. Cox, Jr., and Levi North as follows:

1149 *Master's Report.*

In the Circuit Court of the United States for the Northern District of Illinois. In Chancery.

EUGENE B. MYERS *vs.* BERNARD CALLAGHAN *et als.*

To the honorable the judges of the said court:

I, Henry W. Bishop, master in chancery of the said court, to whom the above-entitled cause was referred on the sixth (6th) day of March A. D. 1883, for the purpose of taking testimony on volume 40 of the Illinois Reports and reporting the same to this court, do hereby report that, having notified the parties interested of a hearing before me for the purposes in the said order expressed, on the eighth (8th) day of May, A. D. 1883, at my office, No. 34 United States Government building, Chicago, I was attended on that day by G. W. Cothran, Esq., of counsel for the said complainant,
1150 and by J. L. High, Esq., of counsel for the defendants. I was also attended on the said eighth (8th) day of May, A. D. 1883, by the following witnesses, to wit: Levi H. Goodrich, A. J. Cox, Jr., & Levi North, each of whom testified herein on behalf of the said complainant, and whose testimony was duly taken and is returned herewith.

I was again attended on the sixteenth day of November, A. D. 1883 (by adjournment), by counsel for the respective parties, and by Bernard Callaghan, one of the said defendants, who testified herein on behalf of defendants & whose testimony was duly taken and is also returned herewith.

All of which is respectfully submitted,

H. W. BISHOP,
Master in Chancery of the Circuit Court of the United States for the Northern District of Illinois.

1151 *Vol.* 40.

In the Circuit Court of the United States for the Northern District of Illinois. In Chancery.

E. B. MYERS, Complainant,
vs.
CALLAGHAN *et al.*, Defendants.

Testimony taken before Henry W. Bishop, master in chancery of said court, —day, the 8th day of May, A. D. 1883.

Present: Mr. Cothran, for compl't; Mr. High, for def't.

LEVI H. GOODRICH, a witness on behalf of the complainant, being first duly sworn, was examined in chief by Mr. COTHRAN, and deposes and says as follows:

Int. 1. Please state your name, age, residence, and occupation.
—. Levi H. Goodrich; 436 West Van Buren street; book-binder.

Q. In whose employ?
A. A. J. Cox & Co.
Q. How long have you been in Cox — Company's employ?
A. I have been with Mr. Cox since 1867.
Q. What is your department in the business?
A. I am foreman.
Q. Do you know the firm of Callaghan & Co.?
A. Yes; very well.

1152 Q. Did you bind for them any copies of vol. 40, Illinois Reports?

A. I know we bound Illinois Reports, and if the books called for 40 we bound them. I know I had charged binding, but I could not, without going to the books, tell whether it was vol. 40.

Q. Haven't you any recollection of the volumes of Illinois Reports that you bound for Callaghan & Co.?

A. I could not tell from memory. They sent in lots sometimes 1,000 or 1,500 books, ten of one kind and ten of another and perhaps fifty of another, filling a slip of legal cap two or three feet long.

Signature waived.

E. B. MYERS, Complainant,
vs.
CALLAGHAN *et al.*, Defendants. } In Chancery.

Testimony taken before Henry W. Bishop, master in chancery of said court, the 8th day of May, A. D. 1883.

Present: Mr. Cothran, for compl't; Mr. High, for def't.

A. J. COX, Jr., a witness on behalf of the complainant, being
1153 first duly sworn, was examined in chief by Mr. COTHRAN, and deposes and says as follows:

Int. 1. Please state your name, age, residence, and occupation.
—. A. J. Cox, Jr.; age, twenty-five; occupation, cashier for A. J. Cox & Co.
Q. How long have you been engaged with A. J. Cox & Co.?
A. Over seven years.
Q. In this city?
A. Yes, sir.
Q. What has been their business during that time?
A. Book-binders and book manufacturers.
Q. What do you mean by book manufacturers?
A. Binding books and putting them together.
Q. After they are printed?
A. Yes.
Q. Do you know the firm of Callaghan & Co., law-book sellers in this city?
A. Yes.
Q. Did A. J. Cox & Co. bind law books for Callaghan & Co.?
A. Yes.
Q. Did they bind any volumes of volume 40, Illinois Reports?

A. According to our books we did; that is the way the charge reads.

Q. Who kept the books?

A. We had a book-keeper at that time by the name of Kessner.

Q. Do you know whether the books are correct?

A. Yes, sir.

1154 Q. Then in answer to the question you did bind vol. 40, Illinois Reports?

A. Yes, sir.

Q. Can you tell when?

A. December 27, 1877, when they were charged.

Q. How many copies of vol. 40, Illinois Reports, did A. J. Cox & Co. bind?

A. One hundred complete volumes.

Q. What else?

A. They folded and gathered 350 more ready for binding.

Q. Were those delivered to Callaghan & Co. by Cox & Co.?

A. Yes, sir.

Q. One hundred volumes bound and the others in the condition you speak of?

A. Yes.

Q. About the time you mentioned?

A. Yes.

Q. From whom did you receive the printed sheets?

A. I could not tell you. I believed they were shipped to our firm by the printed who had printed them.

Q. With whom did Cox — Co. make their bargain for binding?

A. Callaghan & Co.

Q. Were Callaghan & Co. in any way interested in the *form* of A. J. Cox & Co.?

A. No, sir.

Q. Then simply the work performed by Cox & Co. was as the employee of Callaghan & Co.?

A. Yes.

Mr. HIGH: Have you any personal knowledge of these matters?

A. No, sir; I have not.

1155 Mr. COTHRAN: Did you say you had no personal knowledge?

A. No, sir; not that I remember of; only what the books show at the present time.

Q. Has the account for binding these books been settled with your firm?

A. Yes.

Q. What was the price of binding?

A. Fifty cents, I believe. I am not sure, but I believe it was fifty cents for the bound copies.

Q. And what for the unbound copies?

A. Folding and gathering, five cents apiece.

Signature waived.

E. B. MYERS, Complainant,
vs.
CALLAGHAN *et al.*, Defendants. } In Chancery.

Testimony taken before Henry W. Bishop, master in chancery of said court, the 8th day of May, A. D. 1883.

Present: Mr. Cothran, for compl't; Mr. High, for def't.

LEVI NORTH, a witness on behalf of the complainant, being first duly sworn, was examined in chief by Mr. COTHRAN, and deposes and says as follows:

1156 Int. 1. Please state your name, age, residence, and occupation.

A. Levi North; residence, Rewaunee; occupation, lawyer.

Q. Are you acquainted with the defendants, Callaghan & Co.; and, if so, how long have you been acquainted with them?

A. I have been acquainted with them since 1872. I have done business with them some before that.

Q. Were you engaged by defendants to edit any volumes of the Illinois Reports?

A. I was, and did edit one volume—I think the 40th.

Q. In preparing that volume what materials did you *issue?*

A. I *issued* Freeman's reports.

Q. Have you any other sources of information connected with that volume than Freeman's volume?

A. Nothing; only some of the briefs that I had.

Q. Then, in a word, your volume was based almost entirely upon Freeman's?

A. Yes, sir; almost entirely.

Q. When did you do that editorial labor?

A. I have been trying to think whether it was in 1876 or 1877. It strikes me it was 1876. I was here frequently about those times.

Q. Did you read the proof?

1157 A. I did; it was in 1877, I see, by referring to the book.

Q. I present you a volume, 40, of Illinois Reports, as published by Callaghan & Company, and ask you if that is the book you edited?

A. I have no doubt of it. I have never seen a copy since I examined the proof.

Q. Then in no case, in preparing this volume, did you go to the original record?

A. Not to the records at the office of the court; no, sir.

Q. Did you do any editorial labor on any other volume than vol. 40?

A. I did something on some volume. I don't know what it was; it has passed out of my mind.

Cross-examination by Mr. HIGH:

Q. In the volume marked 40, which has been shown you on your direct examination, with the imprint of Callaghan & Co. on the title page, do you state positively that that contains the matter as you prepared it?

A. I will state positively that was as I read the proof. I suppose it is the same as the proof.

Q. You suppose it is the same?

A. I suppose it is the same.

1158 —. Have you examined it to determine that point?

A. No; not definitely.

Q. Did you ever see the completed volume before this morning?

A. No, sir; never to examine it. I may have seen it in libraries.

Q. You have made no examination of it this morning?

A. No, sir; I cannot say I have looked at it enough to make an examination.

Q. How did you prepare the head-notes for volume 40?

A. Every head-note that I prepared I first looked into the decision of the court to see what point it had decided, and its reasons, and, as far as possible, adopted the language of the court, as given in the opinion.

Q. State whether you used or copied Mr. Freeman's head-notes.

A. I looked at them and I saw the—of course, I did that, but I did not copy them. Very many run exactly the same, and I am well aware they run the same, because they are taken from the opinion.

Q. Taken from the opinion in both cases?

A. Yes, sir; taken bodily in both cases from the opinion.

1159 Q. So you did not take Mr. Freeman's head-notes in preparing yours?

A. No, sir; you will find they are different in some places more and in some less. My recollection is in some places there is more and some less, generally abbreviated—that is, shorter than his.

Q. How do you prepare the statement of facts?

A. That I prepared from the statements partly as they appeared in the opinion and partly as they appeared from the other, where any statement of facts was necessary; partly in the opinion and partly in the statement given by Mr. Freeman; that is what I mean by the other.

Q. How did you prepare the index?

A. I run the cases right over.

Q. From your own copy and proof?

A. Yes, sir.

Q. Did you adopt or use Mr. Freeman's index?

A. I don't know, but I might have used it, but I had to page it a little different. I am not quite certain about that.

Q. Didn't you take your own head-notes as you had prepared them?

A. I took my own head-notes.

Q. Did you make any use of Mr. Freeman's index?

A. No use except as to the general style, as to the mere matter of dividing into eight, nine, and ten.

Q. That general style is common to all law reports?

A. Not all, but some.

Redirect examination:

Q. In relation to the two tables of cases in the volume, did you in printing your volume do other than use Mr. Freeman's table of cases and change the pages to correspond with the pages of your book?

A. I do not know just how I did prepare that, but my impression is I did run them through and examine the pages as it is here in this book.

Q. That is all the alteration that you made?

A. Occasionally a difference in the name that I would think easier to understand the reference.

Q. Generally it is predicated on the Freeman table of cases?

A. Generally; yes, sir. I will say generally; that is all.

Signature waived.

And thereupon complainant read in evidence the further deposition of Levi H. Goodrich, recalled as a witness in behalf of complainant, as follows:

MYERS, Complainant,
vs.
CALLAGHAN *et al.*, Defendants. } In Chancery.

Testimony taken before Henry W. Bishop, master in chancery of said court, the 9th day of May, A. D. 1883.

Present: Mr. Cothran; Mr. High.

LEVI H. GOODRICH, a witness recalled on behalf of the complainant, being first duly sworn, was examined in chief by Mr. COTHRAN, and deposes and says as follows:

Mr. COTHRAN: Have you found your receipt book?

A. Yes, sir; here it is.

Q. What do you find in it in relation to the delivery of bound or partially bound copies of vol. 40, Illinois Reports, to the defendants?

A. I find this receipt:

CHICAGO, *December* 27, 1877.

Received from A. J. Cox & Co. 450 copies Illinois Reports—350 sheets vol. 40; 100 law sheep—450.

CALLAGHAN & CO.
W. W.

Q. Who delivered them to Callaghan & Co.?

A. I did. I made out the receipt and sent it by our regular man, and that is the signature I have got back.

Q. Do you know whose writing it is?
A. No, sir; I could not say.
Q. They were sent over to Callaghan & Co.?
A. Yes, sir.

Signature waived.

It is admitted by the parties to this suit that in what are known as the practice cases in the original edition of vol. 40, Illinois Reports, from page- 25 to 130, both inclusive, the opinion- of the court were delivered orally & were reduced to writing by the reporter and were not filed and made a matter of record.

1163 Testimony taken in behalf of defendants concerning infringement of volume 40, embraced in the supplemental bill.

And thereupon defendants, to maintain the issues on their part as to the infringement of volume 40 of the Illinois Reports, embraced in the supplemental bill, read in evidence the deposition of Bernard Callaghan as follows:

Volume 40.

E. MYERS, Complainant,
vs.
B. CALLAGHAN *et al.*, Defendants. } In Chancery.

Testimony taken before Henry W. Bishop, master in chancery of said court, Friday the 16th day of November, A. D. 1883.

Present: Mr. Cothran, for complainant; Mr. High, for defendant-.

BERNARD CALLAGHAN, a witness on behalf of the defendant-, being first duly sworn, was examined in chief by Mr. HIGH, and
1164 deposes and says as follows:

Q. You are one of the defendants in this case?
A. Yes, sir.
Q. You are the same Bernard Callaghan who has heretofore testified in this cause?
A. Yes, sir.
Q. State whether your firm ever printed or ever published vol. 40 of the Illinois Reports.
A. We did print volume 40, but did not publish it.
Q. State whether any copies of volume 40 were ever sold or put upon the market by your firm.
A. None at all, that I know of.

Cross-examination by Mr. COTHRAN:

Q. Is the volume 40 you refer to the volume Mr. Levi North edited for you?
A. I think it is; I am not sure.
Q. How many copies of the volume did you print?
A. I think about 450.

Q. Are they still in existence?
A. They are.
Q. Subject to your control and order?
A. Yes, sir.
Q. As I understand you, you say you printed it, but did not publish it. Please explain what you meant by that answer.
1165 A. I mean that a publication may be printed and not published until it is marketed, or an effort being made to market it, to advertise it, or sell it or offer it for sale. When that is done I consider it is published.
Q. Do you wish to be understood that volume 40 was not included in your advertisement of Illinois Reports?
A. I do not know but what it was originally, but when we found there was trouble over it after it was manufactured we stowed it away, secreted—in other words, did not make known the fact that it was printed.

Signature waived.

Endorsed: Filed Nov. 19, 1883. W. H. Bradley, cl'k.

1166 And thereupon complainant, to further maintain the issues on his part as to volumes 32 to 46, inclusive, of the Illinois Reports, embraced in his original and supplemental bills of complaint, offered in evidence the following certificates of William H. Bradley, clerk of the district court of the United States for the northern district of Illinois, as to said volumes from 32 to 46, both inclusive.

To the introduction of that portion of each of said papers respectively pertaining to volumes 32 to 46, both inclusive, at the bottom thereof purporting to show the date when each of said volumes was deposited defendants then and there objected on the ground that the same constituted no part of the clerk's certificate, but was a mere anonymous statement, when and by whom made not appearing, and that the same as to each and all of said volumes was wholly incompetent to show the date of such deposit; which objection was overruled by the court; to which ruling of the court defendants then and there excepted.

Defendants also then and there objected to the introduction of said paper pertaining to volume 34 on the ground that even if the memorandum at the bottom of said paper is competent evidence of the date when said volume was deposited, then such deposit
1167 was made at the same time with the deposit of the printed title page, viz., October 23, 1866, and that it does not therefore appear that the title page was filed in advance of publication and the work deposited after publication, as required by the act of Congress, and that said paper is therefore wholly incompetent; which objection was overruled by the court; to which ruling of the court defendants then and there excepted.

Defendants also then and there objected to the introduction of said paper as to volume 35 for the reason that it purports to show that the title of said volume was deposited on the 28th day of

January, 1867, while the printed notice on the back of the title page of said volume 35 is as follows: "Entered according to act of Congress in the year 1866," and that there is a variance between the date of entry of such certificate as shown by said certificate and the date of such entry as so printed on the back of said title page of said volume, and that said paper is therefore wholly incompetent; which objection was overruled by the court; to which ruling of the court defendants then and there excepted.

1168 UNITED STATES OF AMERICA, } ss:
Northern District of Illinois, }

CLERK'S OFFICE OF THE DISTRICT COURT OF THE UNITED STATES FOR SAID DISTRICT.

Be it remembered that on the 12th day of August, A. D. 1865, E. B. Myers & Chandler, of said district, deposited in this office the title of a book as follows, to wit: Reports of cases at law and in chancery argued and determined in the supreme court of Illinois, by Norman L. Freeman, counselor-at-law, volume 32, containing the remainder of the cases decided at the April term and a part of the cases decided at the November term, 1863—

The right whereof they claim as proprietors in conformity with an act of Congress entitled "An act to amend the several acts respecting copyrights."

WM. H. BRADLEY, *Clerk.*

NORTHERN DISTRICT OF ILLINOIS, ss:

I, William H. Bradley, clerk of the district court of the United States for the northern district of Illinois, do hereby certify the foregoing to be a true copy from the records of said court in the matter of the entry of a copyright by E. B. Myers & Chandler as the same appears of record in said court and now remaining in my custody.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at my office, in Chicago, this 12th day of August, A. D. 1865, and of our Independence the 90th year.

[L. S.] WM. H. BRADLEY, *Clerk.*

[Internal revenue, 5 cents (cancelled as follows): W. H. B., Aug. 12, 1865.]

Work deposited Jan'y 17th, 1866.

WM. H. BRADLEY, *Clk.*

1169 UNITED STATES OF AMERICA, } ss:
Northern District of Illinois, }

CLERK'S OFFICE OF THE DISTRICT COURT OF THE UNITED STATES FOR SAID DISTRICT.

Be it remembered that on the 21st day of April, A. D. 1866, E. B. Myers & Chandler, of said district, deposited in this office the title of a work as follows, to wit: Reports of cases at law and in chancery argued and determined in the supreme court of Illinois, by

Norman L. Freeman, counselor-at-law, volume XXXIII, containing the residue of the cases decided at November term, 1863, and all of the cases decided at January term, 1864—

The right whereof they claim as proprietors in conformity with an act of Congress entitled "An act to amend the several acts respecting copyrights."

WM. H. BRADLEY, *Clerk.*

NORTHERN DISTRICT OF ILLINOIS, *ss:*

I, William H. Bradley, clerk of the district court of the United States for the northern district of Illinois, do hereby certify the foregoing to be a true copy from the records of said court in the matter of the entry of a copyright by E. B. Myers & Chandler as the same appears of record in said court and now remaining in my custody.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at my office, in Chicago, this 21st day of April, A. D. 1866, and of our Independence the 90th year.

[L. S.] WM. H. BRADLEY, *Clerk.*

[Internal revenue, 5 cents (cancelled as follows): W. H. B., Ap'l 21, 1866.]

(On back of same is the following:)

Work deposited June 8, 1866.

WM. H. BRADLEY, *Cl'k.*

1170 UNITED STATES OF AMERICA, } *ss:*
Northern District of Illinois, }

CLERK'S OFFICE OF THE DISTRICT COURT OF THE UNITED STATES FOR SAID DISTRICT.

Be it remembered that on the 23d day of October, A. D. 1866, E. B. Myers & Chandler, of said district, deposited in this office the title of a work as follows, to wit: "Reports of cases at law and in chancery argued and determined in the supreme court of Illinois, by Norman L. Freeman, counselor-at-law, volume XXXIV, containing a part of the cases decided at the April term, 1864"—

The right whereof they claim as proprietors in conformity with an act of Congress entitled "An act to amend the several acts respecting copyrights."

WM. H. BRADLEY, *Clerk.*

NORTHERN DISTRICT OF ILLINOIS, *ss:*

I, William H. Bradley, clerk of the district court of the United States for the northern district of Illinois, do hereby certify the foregoing to be a true copy from the records of said court in the matter of the entry of a copyright by E. B. Myers & Chandler as the same appears of record in said court and now remaining in my custody.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at my office, in Chicago. this 23d day of Oct., A. D. 1866, and of our Independence the 91st year.

[L. S.] WM. H. BRADLEY, *Clerk.*

[Internal revenue, 5 cents (cancelled as follows): W. H. B., Oct. 23, 1866.]

Work deposited Oct. 23d, 1866.

WM. H. BRADLEY, *Cl'k.*

1171 UNITED STATES OF AMERICA, *Northern District of Illinois,* } *ss:*

CLERK'S OFFICE OF THE DISTRICT COURT OF THE UNITED STATES FOR SAID DISTRICT.

Be it remembered that on the 28th day of January, A. D. 1867, E. B. Myers & Chandler, of said district, deposited in this office the title of a work as follows, to wit: "Reports of cases at law and in chancery argued and determined in the supreme court of Illinois, by Norman L. Freeman, counselor-at-law, volume XXXV, containing a part of the cases decided at the April term, 1864"—

The right whereof they claim as proprietors in conformity with an act of Congress entitled "An act to amend the several acts respecting copyrights."

WM. H. BRADLEY, *Clerk.*

NORTHERN DISTRICT OF ILLINOIS, *ss:*

I, William H. Bradley, clerk of the district court of the United States for the northern district of Illinois, do hereby certify the foregoing to be a true copy from the records of said court in the matter of the entry of a copyright by E. B. Myers & Chandler as the same appears of record in said court and now remaining in my custody.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at my office, in Chicago, this 28th day of Jan'y, A. D. 1867, and of our Independence the 91st year.

[L. S.] WM. H. BRADLEY, *Clerk.*

[Internal revenue, 5 cents (cancelled as follows): W. H. B., Jan'y 28, 1867.]

Work deposited in my office March 5th, 1867.

WM. H. BRADLEY, *Clerk.*

1172 UNITED STATES OF AMERICA, *Northern District of Illinois,* } *ss:*

CLERK'S OFFICE OF THE DISTRICT COURT OF THE UNITED STATES FOR SAID DISTRICT.

Be it remembered that on the 11th day of October, A. D. 1867, E. B. Myers & Chandler, of said district, deposited in this office the title of a work as follows, to wit: "Reports of cases at law and in chancery argued and determined in the supreme court of Illinois, by Norman L. Freeman, counselor-at-law, volume XXXVI, containing most of the remaining cases decided at the April term, 1864, and all of the cases decided at the November term, 1864, and the January term, 1865"—

The right whereof they claim as proprietors in conformity with an act of Congress entitled "An act to amend the several acts respecting copyrights."

WM. H. BRADLEY, *Clerk.*

[Internal revenue, 5 cents (cancelled as follows): W. H. B., Oct. 11, 1867.]

NORTHERN DISTRICT OF ILLINOIS, *ss:*

I, William H. Bradley, clerk of the district court of the United States for the northern district of Illinois, do hereby certify the foregoing to be a true copy from the records of said court in the matter of the entry of a copyright by E. B. Myers & Chandler as the same appears of record in said court and now remaining in my custody.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at my office, in Chicago, this 11th day of October, A. D. 1867, and of our Independence the 92d year.

[L. S.] WM. H. BRADLEY, *Clerk.*

Work deposited in my office Nov'r 13th, 1867.

WM. H. BRADLEY, *Clk.*

1173 UNITED STATES OF AMERICA, } *ss:*
Northern District of Illinois, }

CLERK'S OFFICE OF THE DISTRICT COURT OF THE UNITED STATES FOR SAID DISTRICT.

Be it remembered that on the 31st day of December, A. D., 1866, E. B. Myers & Chandler, of said district, deposited in this office the title of a work as follows, to wit: "Reports of cases at law and in chancery argued and determined in the supreme court of Illinois, by Norman L. Freeman, counselor-at-law, volume XXXVII, containing a part of the cases decided at the April term, 1865"—

The right whereof they claim as proprietors in conformity with an act of Congress entitled "An act to amend the several acts respecting copyrights."

WILLIAM H. BRADLEY, *Clerk.*

NORTHERN DISTRICT OF ILLINOIS, *ss:*

I, William H. Bradley, clerk of the district court of the United States for the northern district of Illinois, do hereby certify the foregoing to be a true copy from the records of said court in the matter of the entry of a copyright by E. B. Myers & Chandler as the same appears of record in said court and now remaining in my custody.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at my office, in Chicago, this 31st day of December, A. D. 1866, and of our Independence the 91st year.

[L. S.] WILLIAM H. BRADLEY, *Clerk.*

[Internal revenue, 5 cents (cancelled as follows): Dec. 31, 1866, W. H. B.]

Work deposited Jan'y 28th, 1867.

WM. H. BRADLEY, *Clerk.*

1174 UNITED STATES OF AMERICA, } ss:
Northern District of Illinois, }

CLERK'S OFFICE OF THE DISTRICT COURT OF THE UNITED STATES FOR SAID DISTRICT.

Be it remembered that on the 22d day of August, A. D. 1867, E. B. Myers & Chandler, of said district, deposited in this office the title of a work as follows, to wit, "Reports of cases at law and in chancery argued and determined in the supreme court of Illinois, by Norman L. Freeman, counselor-at-law, volume XXXVIII, containing the remaining cases decided at the April term, 1865, and a part of the cases decided at the November term, 1865"—

The right whereof they claim as proprietors in conformity with an act of Congress entitled "An act to amend the several acts respecting copyrights."

WM. H. BRADLEY, *Clerk.*

NORTHERN DISTRICT OF ILLINOIS, ss:

I, William H. Bradley, clerk of the district court of the United States for the northern district of Illinois, do hereby certify the foregoing to be a true copy from the records of said court in the matter of the entry of a copyright by E. B. Myers & Chandler as the same appears of record in said court and now remaining in my custody.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at my office, in Chicago, this 22d day of August, A. D. 1867, and of our Independence the 92d year.

[L. S.] W. H. BRADLEY, *Clerk.*

[Internal revenue, 5 cents (cancelled as follows): W. H. B., Aug 22, 1867.]

Work deposited Oct. 10th, 1867.

WM. H. BRADLEY, *Cl'k.*

1175 UNITED STATES OF AMERICA, } ss:
Northern District of Illinois, }

CLERK'S OFFICE OF THE DISTRICT COURT OF THE UNITED STATES FOR SAID DISTRICT.

Be it remembered that on the 10th day of June, A. D. 1868, Eugene B. Myers, of said district, deposited in this office the title of a work as follows, to wit, "Reports of cases at law and in chancery argued and determined in the supreme court of Illinois, by Norman L. Freeman, counselor-at-law, volume XXXIX, containing the remaining cases decided at the January term, 1866, and a few omitted cases decided at the April term, 1864"—

The right whereof he claims as proprietor in conformity with an act of Congress entitled "An act to amend the several acts respecting copyrights."

WM. H. BRADLEY, *Clerk.*

NORTHERN DISTRICT OF ILLINOIS, *ss:*

I, William H. Bradley, clerk of the district court of the United States for the northern district of Illinois, do hereby certify the foregoing to be a true copy from the records of said court in the matter of the entry of a copyright by Eugene B. Myers as the same appears of record in said court and now remaining in my custody.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at my office, in Chicago, this 10th day of June, A. D. 1868, and of our Independence the 92d year.

[L. S.] WM. H. BRADLEY, *Clerk.*

[Internal revenue, 5 cents (cancelled as follows): W. H. B., June 10, 1868.]

Work deposited June 12th, 1868.

WM. H. BRADLEY, *Cl'k.*

1176 UNITED STATES OF AMERICA, *Northern District of Illinois,* } *ss:*

CLERK'S OFFICE OF THE DISTRICT COURT OF THE UNITED STATES FOR SAID DISTRICT

Be it remembered that on the 18th day of September, A. D. 1868, Eugene B. Myers, of said district, deposited in this office the title of a work as follows, to wit: "Reports of cases at law and in chancery argued and determined in the supreme court of Illinois, by Norman L. Freeman, counselor-at-law, Volume XL, containing the practice cases decided since the April term, 1863, and a part of the cases decided at the April term, 1866"—

The right whereof he claims as proprietor in conformity with an act of Congress entitled "An act to amend the several acts respecting copyrights."

WM. H. BRADLEY, *Clerk.*

NORTHERN DISTRICT OF ILLINOIS, *ss:*

I, William H. Bradley, clerk of the district court of the United States for the northern district of Illinois, do hereby certify the foregoing to be a true copy from the records of said court in the matter of the entry of a copyright by Eugene B. Myers as the same appears of record in said court and now remaining in my custody.

In witness whereof I have hereunto set my hand and affixed the seal of said court, at my office, in Chicago, this 18th day of September, A. D. 1868, and of our Independence the 93d year.

[L. S.] WM. H. BRADLEY, *Clerk.*

[Internal revenue, 5 cents (cancelled as follows): W. H. B., Sept. 18, 1868.]

Work deposited Nov'r 6th, 1868.

WM. H. BRADLEY, *Cl'k.*

1177 UNITED STATES OF AMERICA, } ss:
Northern District of Illinois, }

CLERK'S OFFICE OF THE DISTRICT COURT OF THE UNITED STATES FOR SAID DISTRICT.

Be it remembered that on the 22d day of December, A. D. 1868, Eugene B. Myers, of said district, deposited in this office the title of a work as follows, to wit: "Reports of cases at law and in chancery argued and determined in the supreme court of Illinois, by Norman L. Freeman, counselor-at-law, volume XLI, containing a part of the cases decided at the April term, 1866"—

The right whereof he claims as proprietor in conformity with an act of Congress entitled "An act to amend the several acts respecting copyrights."

WM. H. BRADLEY, *Clerk.*

NORTHERN DISTRICT OF ILLINOIS, ss:

I, William H. Bradley, clerk of the district court of the United States for the northern district of Illinois, do hereby certify the foregoing to be a true copy from the records of said court in the matter of the entry of a copyright by Eugene B. Myers as the same appears of record in said court and now remaining in my custody.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at my office, in Chicago, this 22d day of Dec'b'r, A. D. 1868, and of our Independence the 93d year.

[L. S.] WM. H. BRADLEY, *Clerk.*

[Internal revenue, 5 cents (cancelled as follows): W. H. B., Dec. 22, 1868.]

Work deposited Jan'y 29th, 1869.

WM. H. BRADLEY, *Cl'k.*

1178 UNITED STATES OF AMERICA, } ss:
Northern District of Illinois, }

CLERK'S OFFICE OF THE DISTRICT COURT OF THE UNITED STATES FOR SAID DISTRICT.

Be it remembered that on the 21st day of May, A. D. 1869, Eugene B. Myers, of said district, deposited in this office the title of a work as follows, to wit: "Reports of cases at law and in chancery argued and determined in the supreme court of Illinois, by Norman L. Freeman, counselor-at-law, volume XLII, containing the remaining cases decided at the April term, 1866, all of those decided at the November term, 1866, and a part of the cases decided at the January term, 1867"—

The right whereof he claims as proprietor in conformity with an act of Congress entitled "An act to amend the several acts respecting copyrights."

WM. H. BRADLEY, *Clerk.*

NORTHERN DISTRICT OF ILLINOIS, *ss:*

I, William H. Bradley, clerk of the district court of the United States for the northern district of Illinois, do hereby certify the foregoing to be a true copy from the records of said court in the matter of the entry of a copyright by Eugene B. Myers as the same appears of record in said court and now remaining in my custody.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at my office, in Chicago, this 21st day of May A. D. 1869, and of our Independence the 93d year.

[L. S.] WM. H. BRADLEY, *Clerk.*

[Internal revenue, 5 cents (cancelled as follows): W. H. B., 21 May, 1869.]

Work deposited in my office July 7th, 1869.

WM. H. BRADLEY, *Clerk.*

1179 UNITED STATES OF AMERICA, }
Northern District of Illinois, } *ss:*

CLERK'S OFFICE OF THE DISTRICT COURT OF THE UNITED STATES FOR SAID DISTRICT.

Be it remember that on the 21st day of June, A. D. 1869, Eugene B. Myers, of said district, deposited in this office the title of a work as follows, to wit: "Reports of cases at law and in chancery argued and determined in the supreme court of Illinois, by Norman L. Freeman, counselor-at-law, volume XLIII, containing the remaining cases decided at the January term, 1867, a part of those decided at the April term, 1867, and an omitted case decided at the April term, 1866"—

The right whereof he claims as proprietor in conformity with an act of Congress entitled "An act to amend the several acts respecting copyrights."

WM. H. BRADLEY, *Clerk.*

NORTHERN DISTRICT OF ILLINOIS, *ss:*

I, William H. Bradley, clerk of the district court of the United States for the northern district of Illinois, do hereby certify the foregoing to be a true copy from the records of said court in the matter of the entry of a copyright by Eugene B. Myers as the same appears of record in said court and now remaining in my custody.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at my office, in Chicago, this 21st day of June, A. D. 1869, and of our Independence the 93d year.

[L. S.] WM. H. BRADLEY, *Clerk.*

[Internal revenue, 5 cents (cancelled as follows): June 21st, 1869.]

Work deposited in my office July 7th, 1869.

WM. H. BRADLEY, *Cl'k.*

1180 UNITED STATES OF AMERICA, *Northern District of Illinois,* } *ss:*

CLERK'S OFFICE OF THE DISTRICT COURT OF THE UNITED STATES FOR SAID DISTRICT.

Be it remembered that on the twenty-seventh day of September, A. D. 1869, E. B. Myers, of said district, deposited in this office the title of a work as follows, to wit: "Reports of cases at law and in chancery argued and determined in the supreme court of Illinois, by Norman L. Freeman, counselor-at-law, volume XLIV, containing the remaining cases decided at the April term, 1867, and a part of those decided at the June term, 1867"—

The right whereof he claims as proprietor in conformity with an act of Congress entitled "An act to amend the several acts respecting copyrights."

WM. H. BRADLEY, *Clerk.*

NORTHERN DISTRICT OF ILLINOIS, *ss:*

I, William H. Bradley, clerk of the district court of the United States for the northern district of Illinois, do hereby certify the foregoing to be a true copy from the records of said court in the matter of the entry of a copyright by E. B. Myers as the same appears of record in said court and now remaining in my custody.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at my office, in Chicago, this 27th day of September, A. D. 1869, and of our Independence the 94th year.

[L. S.] WM. H. BRADLEY, *Clerk.*

[Internal revenue, 5 cents, cancelled as follows: W. H. B., 9, 27, 1869.]

Work deposited in my office Oct. 2d, 1869.

WM. H. BRADLEY, *Cl'k.*

1181 UNITED STATES OF AMERICA, *Northern District of Illinois,* } *ss:*

CLERK'S OFFICE OF THE DISTRICT COURT OF THE UNITED STATES FOR SAID DISTRICT.

Be it remembered that on the 6th day of October, A. D. 1869, E. B. Myers, of said district, deposited in this office the title of a work as follows, to wit: "Reports of cases at law and in chancery argued and determined in the supreme court of Illinois, by Norman L. Freeman, counselor-at-law, volume XLV, containing the remaining cases decided at the June term, 1867, and a part of those decided at the September term, 1867"—

The right whereof he claims as proprietor in conformity with an act of Congress entitled "An act to amend the several acts respecting copyrights."

WM. H. BRADLEY, *Clerk.*

NORTHERN DISTRICT OF ILLINOIS, *ss:*

I, William H. Bradley, clerk of the district court of the United States for the northern district of Illinois, do hereby certify the foregoing to be a true copy from the records of said court in the matter of the entry of a copyright by E. B. Myers as the same appears of record in said court and now remaining in my custody.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at my office, in Chicago, this 6th day of October, A. D. 1869, and of our Independence the 94th year.

[L. S.] WM. H. BRADLEY, *Clerk.*

[Internal revenue, 5 cents (cancelled as follows): W. H. B, Oct. 6, 1869.]

Work deposited Dec'b'r 8th, 1869.

WM. H. BRADLEY, *Cl'k.*

1182 UNITED STATES OF AMERICA, } *ss:*
Northern District of Illinois, }

CLERK'S OFFICE OF THE DISTRICT COURT OF THE UNITED STATES FOR SAID DISTRICT.

Be it remembered that on the 14th day of October, A. D. 1869, E. B. Myers, of said district, deposited in this office the title of a work as follows, to wit: "Reports of cases at law and in chancery argued and determined in the supreme court of Illinois, by Norman L. Freeman, counselor-at-law, volume XLVI, containing the remaining cases decided at the September term, 1867, and a part of the cases decided at the January term, 1868" —

The right whereof he claims as proprietor in conformity with an act of Congress entitled "An act to amend the several acts respecting copyrights."

WM. H. BRADLEY, *Clerk.*

NORTHERN DISTRICT OF ILLINOIS, *ss:*

I, William H. Bradley, clerk of the district court of the United States for the northern district of Illinois, do hereby certify the foregoing to be a true copy from the records of said court in the matter of the entry of a copyright by E. B. Myers as the same appears of record in said court and now remaining in my custody.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at my office, in Chicago, this 14th day of October, A. D. 1869, and of our Independence the 94th year.

[L. S.] WM. H. BRADLEY, *Clerk.*

[Internal revenue, 5 cents (cancelled as follows): W. H. B., Oct. 14, 1869.]

Work deposited Dec'b. 8th, 1869.

WM. H. BRADLEY, *Cl'k.*

1183 And thereupon the complainant, to further maintain the issues on his part as to his reprint or new edition of volumes

37 and 38, respectively, of the Illinois Reports, embraced in his original bill of complaint, offered in evidence the following certificates and receipts of A. R. Spofford, Librarian of Congress, as to complainant's reprint of said volumes 37 and 38, respectively:

1184 No. 8454 H.

[L. S.] LIBRARY OF CONGRESS,
COPYRIGHT OFFICE, WASHINGTON.

To wit: Be it remembered that on the 20th day of July, anno Domini 1877, E. B. Myers, of Chicago, has deposited in this office the title of a book, the title or description of which is in the following words, to wit: Reports of cases at law and in chancery argued and determined in the supreme court of Illinois, by Norman L. Freeman, volume 37, containing a part of the cases decided at the April term, 1865, Chicago, E. B. Myers, 1877, the right whereof he claims as proprietor in conformity with the laws of the United States respecting copyrights.

A. R. SPOFFORD,
Librarian of Congress.

[L. S.] LIBRARY OF CONGRESS,
WASHINGTON, *July* 28, 1877.

E. B. Myers, 93 Washington St., Chicago, Ill.:

The undersigned hereby acknowledges the receipt of two copies of volume thirty-seven (37), Illinois Reports, edition of 1877 (reprint), transmitted by you to this library in conformity with the laws of the United States respecting copyrights.

Very respectfully,

A. R. SPOFFORD,
Librarian of Congress.

1185 No. 8455 H.

[L. S.] LIBRARY OF CONGRESS,
COPYRIGHT OFFICE, WASHINGTON.

To wit: Be it remembered that on the 20th day of July, anno Domini 1877, E. B. Myers, of Chicago, has deposited in this office the title of a book, the title or description of which is in the following words, to wit: Reports of cases at law and in chancery argued and determined in the supreme court of Illinois, by Norman L. Freeman, volume 38, containing the remaining cases decided at the April term, 1865, and a part of the cases decided at the November term, 1865, Chicago, E. B. Myers, 1877, the right whereof he claims as proprietor in conformity with the laws of the United States respecting copyrights.

A. R. SPOFFORD,
Librarian of Congress.

[L. S.] LIBRARY OF CONGRESS,
WASHINGTON, *July* 28, 1877.

E. B. Myers, 93 Washington St., Chicago, Ill.:

The undersigned hereby acknowledges the receipt of two copies of volume thirty-eight (38), Illinois Reports, edition of 1877 (reprint), transmitted by you to this library in conformity with the laws of the United States respecting copyrights.

Very respectfully,
A. R. SPOFFORD,
Librarian of Congress.

1186 And thereupon defendants, to further maintain the issues on their part, offered in evidence the following certificate of A. R. Spofford, Librarian of Congress, as to volume 34 of the Illinois Reports; to the introduction of which complainant objected on the ground that the same was incompetent and immaterial and, being a copy, could not be received to contradict the original certificate offered by complainant; which objection was sustained by the court; to which ruling of the court counsel for defendants then and there excepted.

1187 NORTHERN DISTRICT OF ILLINOIS, *ss:*

CLERK'S OFFICE OF THE DISTRICT COURT OF THE
UNITED STATES FOR SAID DISTRICT.

Be it remembered that on the 23d day of October, A. D. 1866, E. B. Myers & Chandler, of said district, deposited in this office a work entitled as follows:

2203. "Reports of cases at law and in chancery argued and determined in the supreme court of Illinois, by Norman L. Freeman, counselor-at-law, volume XXXIV, containing a part of the cases decided at the April term, 1864," the right whereof they claim as proprietors in conformity with an act of Congress entitled "An act to amend the several acts respecting copyrights."

WM. H. BRADLEY, *Clerk.*

I, A. R. Spofford, Librarian of Congress, hereby certify that the within is a true copy of the original record of copyright in the Library of Congress.

In witness whereof I have hereunto set my hand and affixed the seal of my office this 28th day of December, A. D. 1877.

[L. S.] A. R. SPOFFORD,
Librarian of Congress.

1188 And thereupon defendants, to further maintain the issues on their part, offered in evidence the following certificates of Thoma B. Needles, auditor of public accounts of the State of Illinois, and of Sharon Tyndale, secretary of state of the State of Illinois, concerning the delivery to the State and the payment for 553 copies each of the 32nd and 34th volumes of the Illinois Reports, respectively;

to the introduction of each of said certificates as to volumes 32 and 34, respectively, complainant then and there objected on the ground that the same constituted no evidence of the publication of either of said volumes, and that said certificates and each of them was wholly incompetent; which objection was sustained by the court; to which ruling of the court defendants then and there excepted.

1189 No. 5573.

AUDITOR'S OFFICE, ILLINOIS,
SPRINGFIELD, *Oct.* 2, 1865.

Treasurer of the State of Illinois pay Norman L. Freeman or order thirty-three hundred and eighteen dollars for 553 copies 32d vol. Ills. Reports furnished secretary of state.

$3,318.00. O. H. MINER,
Auditor P. A.

Countersigned & registered:
J. H. BEVERIDGE, *Treasurer.*

AUDITOR'S OFFICE, ILLINOIS,
SPRINGFIELD, *January 5th*, 1878.

I, Thomas B. Needles, auditor of public accounts of the State of Illinois, do hereby certify that the foregoing and annexed instrument is a true, full, and correct copy of canceled warrant # 5573 and of voucher # 5573, upon which said warrant was issued, now on file in and forming part of the records of this office.

In testimony whereof I hereunto subscribe my name and affix the seal of my office, at Springfield, the day and year first above written.

[L. S.] T. B. NEEDLES,
Auditor Public Accounts.

DEPARTMENT OF STATE, ILLINOIS,
SPRINGFIELD, *October 2d*, 1865.

I, Sharon Tyndale, secretary of state of the State of Illinois, do hereby certify that Norman L. Freeman, Esq., reporter of the decisions of the supreme court, has delivered to me for the use of the State of Illinois five hundred and fifty-three copies of the thirty-second volume of Illinois Supreme Court Reports required by law to be furnished by said reporter under the provisions of sections 22 and 23 of chap. 29 of the Revised Statutes and the provisions of an
1190 act to incorporate the Chicago Law Institute, approved Feb'y 18, 1857.

And I further certify that said copies so delivered are equal in size to the 26th volume of the Illinois Reports and in quality equal to Beecher's edition of Breece's Reports.

[L. S.] SHARON TYNDALE,
Sec. of State.

1191 No. 6972.

AUDITOR'S OFFICE, ILLINOIS,
SPRINGFIELD, *Oct.* 23, 1866.

Treasurer of the State of Illinois pay Norman L. Freeman or order thirty-three hundred and eighteen dollars for 553 copies 34th volume of Illinois Reports.

$3,318.00 O. H. MINER,
Auditor P. A.

Countersigned and registered:
J. H. BEVERIDGE, *Treasurer.*

AUDITOR'S OFFICE, ILLINOIS,
SPRINGFIELD, *January* 5th, 1878.

I, Thomas B. Needles, auditor of public accounts of the State of Illinois, do hereby certify that the foregoing and annexed instrument is a true, full, and correct copy of canceled warrant #6972 and of voucher # 6972, upon which said warrant was issued, now on file in and forming part of the records of this office.

In testimony whereof I hereunto subscribe my name and affix the seal of my office, at Springfield, the day and year first above written.

[L. S.] T. B. NEEDLES,
Auditor Public Accounts.

STATE OF ILLINOIS, SECRETARY'S OFFICE,
SPRINGFIELD, 23d *October*, 1866.

State of Illinois, Dr., to N. L. Freeman, for 553 volumes 34th Ills. Reports, at $6—$3,318.00.

I certify that Hon. N. L. Freeman has delivered the above-named 553 volumes, and that they comport with the standard fixed by law.

[L. S.] SHARON TYNDALE,
Secretary of State.

1192 Testimony in behalf of complainant as to damages sustained by the infringement of volumes 32 to 38, embraced in the original bill.

And thereupon complainant, to maintain the issues upon his part as to the damages sustained by reason of the infringement of volumes 32 to 38, inclusive, of the Illinois Reports, embraced in the original bill, read in evidence the following deposition:

The deposition of Bernard Callaghan, as follows:

1193 In the Circuit Court of the United States for the Northern District of Illinois.

E. B. MYERS, Complainant,

vs.

BERNARD CALLAGHAN, Defendant.

Testimony taken before Henry W. Bishop, master in chancery of said court, Saturday, the 12th day of February, A. D. 1881.

Present: J. V. Le Moyne, Esq., for the complainant; J. L. High, Esq., for the defendant.

BERNARD CALLAGHAN, a witness on behalf of the complainant, being first duly sworn, was examined in chief by Mr. LE MOYNE, and deposes and says as follows:

Q. Are you one of the defendants in this suit?
A. I am.
Q. Have you heretofore testified?
A. I have.
Q. How many copies of the 32d volume of Illinois Reports have Callaghan & Company printed?

Counsel for defendant enters a general objection to having
1194 all questions of this kind directing a discovery of the number of volumes printed, sold, or in hand or relating in whole or in part to any question, considering the same as being irrelevant and incompetent.

A. I do not —.
Q. Did you ever know.
A. I never did.
Q. Do you know how many copies of any of the volumes of from 32 to 38 Callaghan and Company printed?
A. I do not.
Q. Did you ever know?
A. I don't think I did; it is possible I may have have known, but if I did it has escaped my memory?
Q. Do you know who printed them for Callaghan and Company?
A. I do not.
Q. Did you ever know?
A. I don't know who printed certain volumes, but I do know certain printers printed certain volumes, but I do not know who they were. Some of them were printed in Madison, Wisconsin, by David Atwood, and some by the Legal News Company of Chicago, and, I think, some by Hazlett and Reed, and, I think, one or perhaps more by printers—I don't know their names. I think the job
1195 printed of the entire thing. I don't remember the names. I think I would know their names if I heard them repeated.

Q. Is that the most definite answer you can make to the question?

A. I think it is as the question is put.

Q. Who printed the 37th volume of Illinois Reports?

A. I am not sure. I think it is the one the Legal News Company printed.

Q. Don't you remember development in this case when finding that you was very angry with Mr. Bradwell for putting out Myers' and delaying yours?

A. I recollect very distinctly the development that I was very angry with Mr. Bradwell for putting out these same volumes.

Q. And you cannot now remember any publisher having published any number of the volumes in question?

A. I am not certain. I think Mr. Bradwell, or rather the Legal News Company, published volumes 37 and '8, but I am not positive of it.

Q. Do you remember that you were in there to see about the work while it was being done?

A. I am not certain of that.

Q. Were you in and out while the work was being done by these parties?

1196 A. Not very often. I think I was once, possibly more, but that department is not mine.

Q. You mean that department of the business of the company?

A. Yes.

Q. Were you not at that time giving your personal attention to Callaghan and Company?

A. I say we divide our business up in certain departments. One takes charge of one department and one of another.

Q. I ask you if you were not giving your personal attention to the business of Callaghan and Company?

A. Yes, sir; I was.

Q. Were you at the store all the time attending to the business?

A. Not all the time.

Q. How much of the time were you there attending to the business?

A. Well, I don't know. During for a year or two, part of which was that time, I think I was sick and not regular at all in my going to the store; sometimes weeks for a time away.

Q. And is that the reason you are not familiar as to the name of the publisher of those different volumes for you?

A. That, together with the fact that another member of the

1197 firm is taking sole charge of the manufacture. I did at one time take charge of the manufacturing; then I knew a great deal about it, but for years I have not; it has gone into the hands of another member of the firm.

Q. Were these volumes published under contracts with the different publishers?

A. I don't know, but I suppose they were, from our ordinary way of doing.

Q. Did you see the contracts?

A. I did not.

Q. You do not think you ever saw any of the contracts?

A. I do not think I did.

Q. I mean the contracts for the printing or binding of any of the volumes from 32 to 38.

A. I do not think I did.

Q. And you do not know whether they were printed under contracts or not?

A. I do not. I would say it is not our custom making written contracts for the printing.

Q. It is unusual, then, for you to make written contracts?

A. Well, I think it is as to the cost of the printing; yes, sir. We have our printers and we know what they charge us for doing
1198 certain work, and it is unnecessary to make contracts for every job.

Q. Then, according to your recollection, there was no special contracts made for the printing of these volumes?

A. We sometimes do make verbal contracts—present them to the printer and ask him what he will do the work for—and we sometimes jew them down a little, and ask him what he can do that work for.

Question read to witness.

A. I do not know.

Q. Do you not recollect having yourself participated in the negotiation as to the price they should be printed for?

A. I did not.

Q. Did you or did you not?

A. I think I did not.

Q. Do you know how many of each volume were printed by the firm?

A. I do not. It is possible I might have known at the time—that I might have casually said to the person printing them at the time, How many volumes are you printing of them? but, if so, I have forgotten.

Q. Do you know how many you have sold?

A. I do not.

Q. Have you ever known?

A. I have not.

Q. Have you attended in selling them?

1199 A. I probably have not sold hardly any—I guess, in fact, hardly any at all

Q. When you were testifying before did you then state that you did not know as to what was being done in regard to the publishing of these, or how they were being published?

A. I do not recollect whether I was asked the question or not.

Q. Do you remember testifying about the contracts under which they were being printed?

A. I do not.

Q. Had you any more recollection then than you have now; was it fresh in your mind then?

A. I probably had a better recollection about it then than I have now.

Q. As to what you had done in the matter?

A. Yes.

Q. Wasn't this question canvassed between you and your partners as to the price of publishing these volumes and how they were to be published?

A. Very little, if any.

Q. There was very little conference, then, or consideration between you and the other members of the firm as to who should publish them, or how many should be published, or how much they should cost?

1200 A. There was not much; in fact, I was not in Chicago when those volumes were published.

Q. What volumes do you refer to?

A. I do not recollect when we commenced printing. I do not recollect what volumes were published first.

Q. Then how can you say that you were not present during the publication of those if you do not recollect when they were commenced or when they were done?

A. Well, I recollect I was not here when we commenced printing some of the volumes. I do not recollect which they were.

Q. When was it?

A. I could not state now; it was in the neighborhood of four years ago. I could not state with any degree of accuracy when.

Q. Then how can you state that you were not in the city when they were being published if you cannot state when they were published?

A. Well, I recollect I was in Madison the most of the winter four years ago. I think that was four years ago this winter, if I do not mistake.

Q. How could you be in the Legal News office if you were not here?

1201 A. It took a good while to publish these; we were engaged with them a good deal.

Q. How long?

A. I do not know.

Q. About how long?

A. I do not know.

Q. How can you say, then, that it took a long time when you do not know?

A. Well, I have a general idea; I do not know exactly, or nearly so.

Q. Could you tell within three months when you began to publish them?

A. I could not.

Q. Can you tell within three months as to how long you were at it?

A. I could not.

Q. Can you tell within six months?

A. I could not.

Q. Can you tell within six months when you began?
A. I could not.
Q. Can you tell within six months when you were finished?
A. I could not.
Q. Can you tell within a year when you began?
A. I cannot, except by computing the time since this suit was begun by thinking it over in my mind. I cannot with any degree of certainty.
1202 Q. Can you tell within a year when you finished the publication?
A. I could not.
Q. Can you tell within a year and a half when you commenced the publication of these volumes—the volumes in question?
A. I think we commenced within a year and a half of 1876. I think it would be within a year and half; some way of that year.
Q. Would you swear to that, that it was within a year and a half of 1876?
A. To the best of my knowledge, I would.
Q. Prior or subsequent to 1876?
A. I think it was in 1875, just prior to January, 1876, or in 1876, but I am not positive of it. I think those facts can all be got at from our books more correctly than I can give them.
Q. Will your books show who published each volume?
A. They will.
Q. And how many were published by each one?
A. Yes, sir.
Q. I will ask you to bring them here.
A. Does that relate to anything but what pertains to those volumes?
1203 Q. The question I asked you is whether your books will show — published or printed for you the volumes in question and how many copies of each volume was printed for you? I understood you to say your books would show that, and I ask you to bring here those books that will show those facts.
A. I think you can get it much more correctly. I think if the books were here I would not be capable of pointing out the exact fact. If you require that, you can get that better from other witnesses of the firm. I do not think if the books were here now that I could decipher them so as to satisfy you or, in fact, myself from the books.
Q. You say the books will show it, so I suppose you know they will show it, and I ask you to bring them here till we see that they do show it.
A. I am not taking a very active part in the conducting of the business.
Q. Will you produce the books?
A. If I am ordered to, yes, sir; but I think when I do produce them I cannot give the information you desire. I think
1204 there — some members of the firm that can show just the information you desire and the page on which it is, which I know nothing about. I might fumble over these books for hours

if I had them here and then might not be able to find the things you require. I will produce the book.

Adjourned to one o'clock p. m.

Met, pursuant to adjournment, at 1 p. m.
The book in question is produced by Mr. Callahan.

Q. Have you the book referred to?
A. I have.
Q. State from the book with whom the contracts were made to publish each of the volumes, from 32 to 38, and how many of each of said volumes were printed.
A. I do not know that there was a formal contract made in any of those cases, and these books may not be exactly correct. I suppose it is approximately so, though as correct probably as anything of this kind usually is. Any publisher well knows that we generally take this amount from the sheets when folded and passed upon
1205 by the binders and the books tied up in bundles or bound. Very frequently when we come to bind them up we find the volume may be short a signature or more, and they might possibly run less than this; they would not any of them run more; I do not know that any of them run less, but they might possibly.
Q. When were the entries in that book made?
A. I don't know without referring to this book; it appears from this book, May 31st, 1877, it appears that *they* were of volume 32 575 books printed.
Q. By whom?
A. David Atwood. I desire to correct my testimony of this forenoon. I said I thought Hazlett & Reed printed some of those volumes; I find they did not. I also stated that another party, whose name I had forgotten and who, I thought, was in the job printing office of the Inter-Ocean, printed some. I find the name of that party was Titus, and that he did not print any. I was in error, not in saying that I thought so, but in the fact that any of the parties printed that volume, volume 33. It appears that on July 14,
1206 1877, there were printed 548 copies.
Q. By whom?
A. By the Legal News Company, and volume 34, September 15th, 1877, by Atwood—731 copies. Volume 35, printed by Atwood; also, Aug. 28, 1877, it appears that there — 650 printed. Of volume 36, printed by A. & C.—James Atwood it used to be—Atwood & Culver, it appears there were 457 published. Of volume 37, August 24th, 1877, it appears that there — 546 printed by the Legal News Company. Of volume 38, October 6th, 1877, it appears there were 248 copies published.
Q. Is that the total number of copies from 32 to 38, inclusive, that you have ever published?
A. It is, as far as I know of.
Q. Have you no knowledge of any others ever being published by you than those you have now enumerated?
A. Of the same volumes?

Q. Of those volumes.

A. No, sir.

Q. Does the book from which you have been given those numbers contain also a statement of the numbers of each of the numbers sold?

A. No, sir.

1207 Q. The numbers of copies?

A. No, sir.

Q. Does it give the date that you received them from each of the printers of the volumes?

A. Yes, sir; those were the dates I gave him.

Q. Were the volumes that you have mentioned as of a certain date the date of receiving it, or did you receive them at different times from the printer?

A. I think that they were all received on that date, sir.

Q. Were those volumes all bound or not?

A. No, sir; they were not at the time.

Q. How many of them were ever bound?

A. I do not know.

Q. Can you tell by examining your books there how many of those volumes—each of them—you have ever bound?

A. I cannot.

Q. And you have no knowledge yourself?

A. No, sir.

Q. Can you tell approximately how many were bound?

A. I can tell pretty near. This book is not brought down

1208 to date. There have been some bound since this book.

Q. Tell as near as you can, commencing at volume 32, as you have given them in that order before.

A. Of volume 37—that is, the first volume I have added up here—I think there were 386 bound.

Mr. HIGH: Up to what time?

A. Up to August 30th of the past year—1880. Of volume 38 I think there were 391.

Mr. HIGH: Up to what time?

A. Up to June 30th, 1880. Of volume 36 I think there were 397.

Mr. HIGH: Up to what time?

A. August 31st of 1880. Of volume 35th I think there were 409 to August 31st, 1880. I think of volume 34 there were 392 up to August 31st, 1880. Of 33 I think there were 394 up to June 9th, 1880. There is one figure here I am — sure whether it is one or two; if it is one it would make ten topies; if it is two it would make twenty copies.

Q. Is it in the columns of tens?

A. If it is ten it appears that there is 416; if it is a twenty there would be ten more copies—that is, volume 32—up to August

1209 31. Now, I am not sure that my footings are exactly correct; I am liable to make mistakes; I am not very correct in figures.

Q. But the book from which you made these statements is the book of the firm and anybody can foot them up.

A. Yes, sir; if I had made a mistake some more expert accountant can figure them.

Q. Is the number of volumes printed and the number of volumes bound given on the same page of the same book?

A. Yes, sir.

Q. When were the entries made in that book you have now given?

A. The first entry was made when the book was printed, or when we received the first quantity from the bindery, and then all subsequent entries as we received the books from the binders.

Q. That is, the entries were made in the book at the time stated in the book?

A. Yes, sir.

Q. Now, look again at the page of the number of copies printed of volume 38 and tell me again what that is.

A. It appears that there were 248.

1210 Q. Now, you have stated that there were of that volume 391 bound. What is the explanation that you can give of the difference, there being so many less printed than you have mentioned as bound?

A. I find that that book was reprinted. I took off the number of bindings without noticing that the book was reprinted.

Q. A second lot of that book was printed?

A. The second lot was printed.

Q. What was the amount of the second lot?

A. I am not sure, but I think there were 524 on the reprint.

Q. Of the second lot?

A. The time it was reprinted.

Q. Do you mean a second edition?

A. Well, a reprint. We do not generally call it a second edition unless we make some change in the book. Those were received, I think, on January 5th, 1877.

Q. Was that the only volume of these that you reprinted?

A. I think it is the only volume reprinted.

Q. Well, the first lot was printed in October, 1877, you have stated. How could it have been that the second lot was printed in

1211 January of the same year?

A. We probably sold the first lot down to such a low number, perhaps entirely, or to such a low number, that we had to reprint them.

Q. But you stated that the first lot was printed in October, 1877; now you give the date of the second lot as January. Are you not mistaken in regard to the date of the second lot?

A. I think it was January, 1879. I think I took a figure 9 for 7. It looks like a 7. I think it is a 9.

Q. Now, upon looking over it, wasn't it the fact that you printed the larger lot first—the five hundred and odd first and the two hundred and odd afterwards?

A. I think not, sir. I think the way that occurred there was some mistake made in the printing of the volume—using the paper

for another volume that was intended for these—and we only had a small lot left, and we run off what there was left.

Q. Were these volumes stereotyped by you or electrotyped; and if so, which?

A. I think they were all stereotyped.

1212 Q. Have you bound any of these volumes since the date you have given here?

A. I think we have, sir.

Q. Can you tell how many?

A. I have no idea—none at all.

Q. Don't your books show that?

A. I think we can get at it. This book has been neglected, owing to a change in our book-keepers; it has not been kept up as it was, but we can get at it from different sources—going through our invoices from the binders; it will require considerable time. I think Mr. Myers will understand how that was; yes, sir, we can get at it, but it will require considerable time and many figures.

Q. You don't know, then, without going through other books, how many copies have been bound since this?

A. No, sir.

Q. But your recollection is some have been?

A. Yes, sir; I think there has been some.

Q. A large number or a small number?

A. I think a small number.

Q. In what size lots did you have these bound?

1213 A. Oh, we had them bound in tens and twenties; sometimes eight and eleven. I find odd numbers here; they are not all here.

Q. Have you so fixed that book that it can't be examined without your objection?

A. I think so; yes, sir.

Q. I will ask to look at it if you have it fixed so it is not objected to (taking book). The entries on one side of the account indicate the printing, does it, and the other the number bound?

A. No, sir. I can explain it, I think; this lot here indicates the printing, and this lot here indicates the number bound at first, and after that this lot would appear subtracted from the whole; this is the first lot bound, 125 from 575 printed, it left 450, and then here are the lots as bound afterwards.

Q. Part of this entry is made in ink and part in pencil?

A. Yes, sir.

Q. The four entries on page 227 in ink, what does that represent?

A. That represents the cost of making those books, I think, not including the binding; the binding is not in nor certain

1214 other expenditures connected with it; it means certain cost in connection with printing these books.

Q. It includes the paper, plates, press-work, and cartage?

A. I presume it includes just what it states.

Q. The figures are meant to indicate the cost, about?

A. I think so.

Q. And the entries on the other side of the page are meant to indicate the number printed and the number bound?

A. Yes, sir.

Q. And all of those entries are in pencil, are they not?

A. Yes, sir; it seems so.

Q. On page 227; then the cost of volume 32; for paper, $137.12?

A. Yes, sir; that probably don't include freight of paper from mills to printing office, or cartage, or anything of that kind. Plates, $706.79; press-work, $46.50; cases and cartage, $11.50. Now, is that intended to show the cost of printing the 775 volumes?

A. I think so.

Q. That is the way you understand it?

1215 A. That is the way I understand it; yes, sir.

Mr. HIGH: I ask leave to ask the witness a question here, which is consented to. The figures to which Mr. Le Moyne has called your attention do not include, as I understand, the binding and many other incidental expenses, but just what is specified?

A. Just what is specified.

Q. Now, state from your books what was the cost of the paper for volume 33.

A. $158.29.

Q. What were the cost of the plate- and the boxes?

A. It appeared that it cost $554.45.

Q. And the press-work, how much?

A. $35.62.

Q. That was, then, the cost of the paper, plates, and boxes and press-work of 548 volumes, was it?

A. Yes, sir; it would seem so.

Q. Now, what was it in the next volume?

A. Volume 34; it would appear that the paper cost $118.12; plates, $416.02; press-work, $27; cases and drayage, $10.

1216 Q. That was the expense of printing 731 copies?

A. Yes, sir; volume 35, it appears that the paper cost $159.64; plates, $617.38; press-work, $40.50; case for shipping, $6. They were printed at Madison and had to be shipped down here, and those were the cases.

Q. That was for printing how many volumes?

A. For printing, it appears, 650 volumes.

Q. It appears here on the same entry, bound 150 and sheets 500.

A. Yes, sir.

Q. That shows the disposition of the 150 bound at that time, Aug. 28, 1877?

A. Yes, sir.

Q. And the 500 in sheets?

A. Yes, sir; 650, total. Now, volume 36, it would appear that the paper sent to D. Atwood cost $118.12. It appears that the plate- cost $698.51 and the press-work $33. The number of volumes, it would seem, were 457. Of volume 37 it would appear that the paper cost $155.92; the plates, $542.69; press-work, $35.62; the number

1217 of copies, 546. It would appear that of volume 38—that is the one that has been reprinted—it appears that the plates of

volume 38 seems to be the first item, and they cost $713.70; press-work $35. Then on the next edition it would appear that the paper cost $109.72 and the press-work $37.10.

Q. That is the expense of printing both lots you have given now?

A. The cost of the paper of the first lot does not appear on the book.

Q. And you are not able to state what it was?

A. No; I have no idea.

Q. You say that it was some little lot that was left from some other; you don't know whether it was some little that was left from these volumes you have enumerated or not?

A. I don't know what it was left from; I do not think it could be from those, because the amount of paper seems to be nearly correct. That is the cost for the number published.

Q. That is, you think there wasn't any left over from the number that you have enumerated to print that little lot of 248 copies?

1218 A. I think not; I think there could not have been any left.

Q, How many of those volumes have you sold?

A. I have no idea.

Q. In having them bound were they sent to the binders as required for sales?

A. Oh, no; we calculate to keep up a certain line of stock—a certain amount of stock in the store.

Q. About how much?

A. Oh, I think if the number got down to 4 or 5 copies we should send a fresh lot in, so as to have those ready by the time those 4 or 5, perhaps more or less, were gone. I don't really know what the custom of manufacturers is now.

Q. Your book indicates that you sent to the binders in lots of about 10, so that I suppose from that you did not keep on hand more than 10 or 15 copies of the volume.

A. Probably not.

Q. Wouldn't the book show, then, that you had sold the volumes which had previously been bound, when you sent a new lot, or nearly so?

1219 A. They would indicate that we were getting low, so low that, in our judgment, we should send some to the binder in order to have them bound. Sometimes it takes longer than other times, and we know that, and we might send them in advance, or if he was slack in work we might send him volumes to keep him busy. We have done such things.

Q. The lot sent, in volume 32, for example, appears to have been sent in periods of from one to three months apart and in lots of from 10 to 17. Could you tell from looking at that about how many volumes had been sold prior to August 31st?

A. I could not.

Q. You could not tell whether you had more than ten on hand, then, or less?

A. I could not.

Q. The last lot sent before Aug. 31st was how many volumes, and at what date?

A. I don't know when they were sent. These, I think, were the dates on which they were received from the bindery. It would appear from this that the last lot was received on August 31, and the number was ten copies.

Q. The next preceeding lot was when, and how many?

1220 A. That would appear to be April, I think. Whether that is April or not, I don't know; I think it is. I supposed it would be April 30th, and that was the figure. I was in doubt about whether it is one or two. It is probably a two, and, if so, it is twenty.

Q. Now, turn to 33. When was the last lot?

A. It appears to be June 9th.

Q. How large a lot?

A. Ten copies.

Q. When was the lot before that?

A. April 30th, it appears; 10 copies.

Q. Now, 34.

A. The last lot received, August 31, ten copies. The lot before it, March 31st, 20 copies; before that, ten copies.

Q. When was that?

A. February 13.

Q. Now, the 35.

A. The last lot received, — appears, was received on August 31, ten copies. The lot before that, on April 15, ten copies. There is a memorandum on the right-hand margin: Paid five cents.

Q. What is that?

A. I think it means for folding those that were not bound—folding and gathering.

Q. 36; that is the last lot received there?

A. Ten copies, August 31.

Q. Next preceding?

1221 A. Ten copies, on April 30th.

Q. 37th?

A. The last lot appears to have been received on April 30th, twenty-five copies. The lot before that, March 20th, ten copies.

Q. 38?

A. The last lot seems to have been received June 30th, ten copies, and the lot prior to that, March 31st, twenty copies.

Q. Was this book posted in regard to the number received from the bindery up to the first of December, 1880; and, if not, to what date was it posted?

A. The dates that appear here. I think there has been no posting done on this, only what appears here on this page, and, as I stated before, there undoubtedly has been some received from the bindery since those dates, but I have no idea of how many, as this book has not been kept up as closely as it should have been, owing to our change of book-keepers. I can only get at it from other sources which I have not access to now.

Q. I only asked you if they had been posted up to September,

1880. The last entry is August 31st, but there may not have been an entry for a long time after.

1222 A. I don't know, only from the dates I have named.

Q. The only thing you know is it was posted to August, but you don't know whether there were other entries to go in, and if there were if they were put in?

A. I think they were, if they had been properly put in as I said.

Q. But you don't know how soon they were?

A. No, sir.

Q. Wouldn't the making of stereotype plates for these volumes increase the cost per volume very much of the first lot printed if the expense was charged to that lot? I mean wouldn't other copies of those volumes be printed at very much less cost if you had those plates?

A. Certainly.

Q. Well, now, what would be the difference between the cost of printing these books with stereotype plates and printing with type? What does it cost for stereotyping?

A. I don't know.

Q. You don't know how much the difference is?

A. No, sir.

Q. It is considerably more, isn't it?

A. It is considerably more; yes, sir.

1223 Q. And the amount that you have given as to the cost is in putting in the value for making of the plates?

A. I think so.

Q. Which plates you have yet, I suppose?

A. I think so; yes, sir.

Q. Mr. Callaghan, did you issue circulars from time to time advertising these volumes for sale?

A. I think we did.

Q. And giving the prices of them in those circulars?

A. I think we named prices. I think we were not governed by those prices in making the sales, always.

Q. I will ask you to produce copies of these circulars.

A. I have not got any with me, and I don't know whether there are any in the store or not; I don't know whether we preserved any of those things or not.

Q. How many did you issue?

A. I don't know.

Q. How often did you issue them?

A. I don't know that.

Q. You know you issued some?

A. I think we did.

Q. You don't know whether you have any copies of these circulars?

A. No, sir; I don't.

Q. I will ask you to examine and see and produce here a 1224 copy of those circulars containing the price at which those books were offered for sale?

A. I will. I would state that those circulars would not indicate

what the prices were the sales were made at. Our sales we got somewhat by Mr. Myers; sometimes we brought the prices down to the price he advertised from the circular price.

Q. That is, you mean to say these prices at which the books were advertised for sale were not followed if Mr. Myers advertised them at a lower price?

A. They were not always followed closely.

Mr. HIGH: Let me ask you, did you not frequently vary from these advertised prices for other reasons than for Mr. Myers?

A. I think we did.

Hearing here adjourned to Monday, February 14th, A. D. 1881, at 2 o'clock p. m.

1225 Testimony taken before Henry W. Bishop, master, &c., Monday, the 14th day of February, A. D. 1881.

Present: Mr. Le Moyne, for complainant; Mr. High, for the defendant-.

BERNARD CALLAGHAN, a witness on behalf of the complainant, being first duly sworn, was examined in chief by Mr. LE MOYNE, deposes and says as follows:

Q. Can you send your list calendar, giving the number of copies of each of said volumes which have been printed in addition to those already given?

A. Volume 32, December 28th, 1880, 20 copies; January 3d, 1881, 10 copies; volume 33, November 30th, 1880, 10 copies; January 14th, 1881, 10 copies; volume 34, October 30th, 1880, 10 copies; January 14th, 1881, 10 copies; volume 35, December 28th, 1880, 20 copies; volume 36, December 28th, 1880, 20 copies; volume 37, October 30th, 1880, 10 copies; January 14th, 1881, 10 copies; volume 38, December 28th, 1880, 20 copies; that's all.

1226 Q. You were asked also to produce circulars issued by your firm offering the books in question for sale. Can you produce any? And, if so, please to do so now.

A. Thus far I have been unable to find any.

Q. When did you issue your last catalogue or list of books for sale?

A. I don't think we reprinted the catalogue recently, but I think we may have those in the body of the work.

Q. Have you any copies on hand of the catalogue you printed?

A. Yes, sir; plenty of them.

Q. Does not that catalogue embrace the volumes in question?

A. I suppose it does.

Q. This, then, would be one of the catalogues you were asked to produce?

A. I will produce one, which can be left with the master.

Q. Is that the only catalogue you have?

A. It is the only one we have.

Q. When did you issue the catalogue of your publications?

A. I do not know when it was issued. I have not the remotest idea.

Q. Or distributed?

A. Yes, sir; being distributed right along.

Q. If you are distributing now can you produce a copy?

1227 A. I will produce that (looking at paper marked List of Publications of Callaghan and Company). We have a number of them. I am not sure of that, and I will file that with the master if I can find them, and I think I can.

Cross-examination by Mr. HIGH, defendant's counsel:

Q. Do I understand that the book which you had produced, showing the number of copies of volumes 32 to 38, has been kept by yourself or some of your employees?

A. It has been kept by my employees.

Q. You had not that mentioned or sworn positively of your own knowledge that it is marked in the book.

A. I don't think I have stated so before.

Adjourned to 2 o'clock to-morrow.

And thereupon complainant read in evidence the deposition of John Marder as follows:

1228 Testimony taken before Henry W. Bishop, master, &c., Tuesday, the 15th day of February, A. D. 1881.

Present: Mr. Le Moyne, for complainant; Mr. High, for defendant-.

JOHN MARDER, a witness on behalf of the complainant, being first duly sworn, was examined in chief by Mr. LE MOYNE, and deposes and says as follows:

Q. Please state your name, age, residence, and occupation.

A. John Marder.

Q. State your business.

A. I am one of the proprietors of Marder, Luce & Co., type founders.

Q. How long have you been engaged in business in Chicago?

A. 20 years.

Q. Book-making and book printing been a part of your business?

A. Not book printing or book-making, but making the stereotype plates for book-making.

Q. Will you state what is and has been for the last 4 or 5 years the comparative cost of printing a book by making stereotype

1229 plates and prin- from the type without making stereotype plates? What is the difference in the cost and which is cheaper?

A. The difference in the cost over the type-setting and type-setting and stereotyping is an addition of about half the cost of type-setting.

Q. Which is the most expensive—making stereotype plates?

A. Making stereotype plates.

Q. That is to say, the cost of type-setting would be increased 50 per cent. by making stereotype plates?

A. Fifty per cent.

Q. A book, then, could be printed without making stereotype plates at ⅔ the cost of printing it with plates?

A. Yes, sir.

Q. How long has that been the proportionate cost of the two methods in Chicago?

A. Between 3 and 4 years.

Cross-examination by Mr. HIGH:

Q. When a book is not stereotyped the type are distributed after the first impressions are printed, as a rule; is not that true?

A. Yes, sir; as a rule.

Q. And they are distributed from time to time as fast as
1230 each form is worked off the press?

A. As a rule.

Q. Then, if I understand you, if it is desired to perpetuate a book or reproduce future impressions it is necessary to stereotype it, is it not?

A. Yes, sir.

Q. Is it not true, as a rule, that most publishers prefer in the long run to stereotype their books rather than to print them from the original type without stereotyping where the books are of a nature of law reports?

A. That is invariably the case, I believe, now.

Q. Is it not true that publishers find it to be economical in the long run to stereotype law reports rather than to print them from the type?

A. Yes, sir.

Mr. LE MOYNE:

Q. By stereotyping them the cost of the first edition is very much larger, is it not, than it would be by the other method?

A. It is the additional cost of the stereotyping larger.

Q. What would be the comparative cost of printing a book, an edition of 500 volumes of a book, and a thousand volumes printed at the same time per volume?

1231 A. That is out of my line of work and is a matter I am not so familiar with.

Mr. HIGH:

Q. Would it not be a fact that the additional cost of printing another 500 copies after the type was once set would only be the press-work and the cost of paper.

A. That is all.

Mr. LE MOYNE:

Ques. When you say it is necessary to stereotype it you mean it is necessary if you seek to avoid the expense of resetting?

A. Yes, sir; that is all.

Mr. HIGH:

Q. You mean it would be a measure of real economy to stereotype it?

A. I would regard — so.

Mr. LE MOYNE:

Q. It is not customary in printing without stereotype plates to print a larger edition than when you have plates from which you can print at any time?

A. Yes, sir; it is customary to do that.

Q. It is cheaper?

A. Yes, sir.

1232 Q. When you say the cost of stereotype plates would exceed the cost of composition by 50 per cent. you mean irrespective of the size of the edition printed?

A. Yes, sir.

Q. You mean, in other words, of the cost of the composition and stereotyping together exceeded the cost of the composition alone by 50 per cent.?

A. Yes, sir.

Q. But you do not mean, as I understand you, on an edition of, say, 500 copies the cost of the producing the 500 by the stereotyping process would exceed that of their production by the ordinary typesetting process 50 per cent., do you?

A. It would make no difference.

Mr. HIGH:

Q. It would make no difference as to whether the edition was large or small; there would be that proportion between the cost of the two methods?

A. Yes, sir.

Q. Your answer to Mr. Le Moyne's last question, as I understand, is confined to the cost of producing stereotype plates as a manufactured article?

A. It is.

Q. As compared with setting type at the same time?

1233 A. Yes, sir.

Q. You do not mean to be understood in printing an edition of 500 copies from the stereotype plates that the cost would be 50 per cent. over that of printing an edition of 500 copies from the ordinary type, unstereotyped?

A. No; I do not mean to be understood in that way; that is a separate item.

Mr. LE MOYNE:

Q. What is the difference, then, and how is the percentage of increase between the two methods of the composition and the stereotyping affected by the number of volumes printed?

A. The only way I can see it would be affected is by the higher price for press-work when the work is done from the type instead of the stereotype plates.

Q. But not in the preparation of the type or plates of the books for the press?

A. No.

Q. It would not be affected in that way at all, would it, by the number of copies printed?

A. No, sir.

Mr. HIGH:

1234 Q. Is it not true that in proportion as you increase the number of copies of the book produced from stereotype plates you diminish the percentage of difference between the cost of the stereotyping and the non-stereotyping process per volume?

A. Yes, sir.

Signature of witness waived by agreement.

And thereupon complainant read in evidence the deposition of Charles E. Leonard as follows:

1235 Testimony taken before Henry W. Bispop, master, &c., Tuesday, the 15th day of February, A. D. 1881.

Present: Mr. Le Moyne; Mr. High.

CHARLES E. LEONARD, a witness on behalf of the complainant, being first duly sworn, was examined in chief by Mr. LE MOYNE, and deposes and says as follows:

Q. Please state your name, age, residence, and occupation.

A. Chas. E. Leonard.

Q. State your occupation.

A. Printer.

Q. How long have you been engaged in that business in Chicago?

A. 17 years.

Q. Are you acquainted with the cost of printing books?

A. I am pretty well acquainted with it.

Q. That has been a part of your business?

A. We make a specialty of book-making.

1236 Q. Can you state what is and has been the proportion of cost between printing a book by making stereotype plates and printing it from the type?

A. 25 per cent. additional for making the plates.

Q. 25 per cent. added to the cost of composition?

A. The composition has to be done first before the plate can be made; then, if the book is to be printed from plates, it would cost 25 per cent. additional to the composition to prepare the plates.

Q. Do you mean 25 per cent.

A. I mean 50 per cent. where I have used 25 per cent. For instance, we pay 50 cents per thousand for the composition and then charge 25 cents more for the plates, making the cost of the stereotype plates 75 cents.

Q. By the other method it would be 50 cents?

A. Yes, sir.

Cross-examination by Mr. HIGH:

Q. I understand your answer to refer merely to producing the mechanical result of the stereotype plate, irrespective of the book printed from the plate?

A. Yes, sir.

Q. Is it not true that in permanent publications, such as
1237 volumes of law reports, publishers usually find it cheaper in the long run to stereotype than not to stereotype?

A. I think they do. The only law work I recollect having anything to do with that was not stereotyped was the Revised Statutes.

Q. All other law reports have been?

A. All others have been stereotyped or electrotyped.

Q. When it is desired to produce future impressions it is a measure of real economy to stereotype?

A. Yes, sir.

Mr. LE MOYNE:

Q. When you say it would be economy to make stereotype plates you mean it would be so if there was to be a sale sufficient to require future issues of the book?

A. That is what I mean to be understood.

Q. It would depend altogether on the sale of the book as to the economy?

A. Certainly.

Q. If the sale was to be limited it would be cheaper the other way?

A. Yes, sir.

Signature waived.

And thereupon complainant read in evidence the deposition of Charles A. Bartlett as follows:

1238 Testimony taken before Henry W. Bishop, master, &c., Thursday, the 17th day of February, A. D. 1881.

Present: Mr. Le Moyne, for complainant; Mr. High, for defendant.

CHAS. A. BARTLETT, a witness on behalf of the complainant, being first duly sworn, was examined in chief by Mr. LE MOYNE, and deposes and says as follows:

Q. Please state your name, age, residence, and occupation.

A. Charles A. Bartlett; assistant book-keeper and collector for Culver, Page & Hogue.

Q. How long have you been in their employment?

A. Five years last December.

Q. During that time have they bought from Callaghan & Co. any copies of the Illinois Reports, volumes 32 to 38, inclusive; and, if so, how many and at what price?

A. All I can say is I have a bill of Callaghan & Co., February 19, 1878, one volume, number 36.

Q. Are these bills you received from Callaghan & Co.?

1239 A. They are bills received from Callaghan & Co., with their monthly statements receipted.

Q. Explain what these papers are.

A. They are bills and monthly statements, the statements being receipted.

Q. Monthly statements?

A. Yes, sir.

Q. Do the monthly statements include the bills?

A. Yes, sir.

Q. The monthly statements show, then, as I understand, the receipt for the money for the books charged in the bill?

A. That is it—a statement of the account.

Q. Explain this bill of February 19, 1878.

A. That means 20 per cent. off their price, $7.50, leaving $6.00. We supply counties with all their supplies, and they send to us for these books, as well as other things, and we get a discount for handling.

Cross-examination by Mr. HIGH:

Q. As a matter of fact, you buy very few Illinois Reports from Callaghan & Co.?

A. It seems so by the bills.

Q. On the bill dated Nov. 1, 1879, at what price do you

1240 understand these volumes were furnished you, from 32 upwards?

A. I should understand it was furnished at $5.00

Q. On the bill dated March 22, 1878, at what price do you understand volume 32 and upwards were?

A. In the first place at $7.50, with a discount of 20 per cent., and then on March 29th they gave us additional discount of 10 per cent. I presume they were for some county, and they gave us 10 per cent. for handling. February 19, 1878, one volume, No. 36; the price is not carried out; it is $7.50, 20 per cent. off; nett, $6.00. The bill of November first, 1879, embraces 27 volumes, of which one is of 32, one of 33, and one of 35, at five dollars nett for all of them, embracing the whole bill. Bill of March 22, 1880, includes eight volumes, of which there is one of 32 and one of 33, at $7.50, 20 per cent. off, making $48.00, with an additional discount, March 29, 1880, of ten per cent., making the total amount of the bill of March 22 $43.20. That makes Illinois Reports nett $5.40 each.

Signature waived.

1241 And thereupon complainant read in evidence the deposition of George M. Beckwith as follows:

Testimony taken before Henry W. Bishop, master, &c., Thursday, the 17th day of February, A. D. 1881.

Present: John V. Le Moyne, Esq., for complainant; J. L. High, Esq., for defendant-.

GEORGE M. BECKWITH, a witness on behalf of the complainant, being first duly sworn, was examined in chief by Mr. LE MOYNE, and deposes and says as follows:

Q. Please state your name, age, residence, and occupation.

Q. Please state your name, place of business, and character of your business.

A. George M. Beckwith; 163 Clark street; law-book seller.

Q. How long have you been engaged in selling law-books?

A. I have been selling law-books for twelve years.

Q. Have you bought from Mr. Callaghan & Co., since 1876, any of their reprints of volumes 32 to 38 of Illinois Reports; if so, when and how many about?

1242 A. When I was subpœn-ed to come along with my invoices I could only find an invoice for one volume, although my impression was that I had purchased more than one volume.

Q. During what time have you been purchasing from them these volumes?

A. Well, I—since October 1st, 1878.

Q. At different times from that time to this?

A. Well, I have just stated that I was under the impression that I purchased several volumes, but I can only find the record of having purchased but one volume.

Q. Well, don't you know that you have purchased more? I am not asking you about the invoice.

A. Well, no; I cannot tax my memory with any.

Q. You cannot tell that you have bought any more?

A. I cannot tax my memory with the purchase of any or any sale that I have made, although it was my impression I bought several volumes.

Q. Don't you know of but one volume?

A. I say that is all that I could find now, although I believe I purchased others.

1243 Q. How many?

A. Very few.

Q. As many as a dozen?

A. Oh, no; I don't believe my impression would make it as high as a dozen.

Q. What price did you pay for them?

A. Well, if they were regular price books, not second-hand or anything, why I paid $6.75 for them.

Q. Was that their selling price?

A. Their selling price, as I understood it, has been $7.50, 10 per cent. off for the trade.

Q. From whom did you understand that?

Mr. HIGH: Objected to.

The WITNESS: From Mr. Callaghan.

Q. Did they tell you that was their price; if so, when?

Mr. HIGH: Objected to as leading.

The WITNESS: They told me that was their price; yes.

Q. When?

A. I could not exactly say when; at various times when I have been in the store; when I have made inquiries.

Q. During the last three years?

A. During the last—a little over two years.

1244 Cross-examination by Mr. HIGH:

Q. You have no recollection now of your actually purchasing more than one volume?

A. No positive recollection; no.

Hearing adjourned to —.

1245 And thereupon complainant read in evidence the deposition of Michael A. Donahue as follows:

Testimony taken before Henry W. Bishop, master, &c., Thursday, the 17th day of February, A. D. 1881.

Present: John V. Le Moyne, for complainant; J. L. High, for defendant-.

MICHAEL A. DONAHUE, a witness on behalf of the complainant, being first duly sworn, was examined in chief by Mr. LE MOYNE, and deposes and says as follows:

Q. Please state your name, age, residence, and occupation.

A. Michael A. Donahue, and my occupation is that of book-binder.

Q. Do you know the style of binding that Mr. Callaghan has bound the Illinois Reports?

A. Yes, sir; well, I don't know that I know their style; I know the style law reports are done in.

Q. Have you seen their reports?

A. Well, no; unless they will admit that is the way theirs is done, I don't know as I have.

Q. Examine the volume of Illinois Reports, volume 36,
1246 printed by the dofendants and state what was the market value for binding those books in that way, from December, 1877, down to this time.

A. Well, down to this time, 47 cents was all the price of binding.

Q. Was that the fair market price for a binding of that character?

A. Yes, sir.

Cross-examination by Mr. HIGH:

Q. Did you bind this?

A. No, sir.

Q. Do you include in that 47 cents the folding together and cutting?

A. Yes, sir; that is the price we charge- *for* Mr. Myers when we done his books that were done in the same way as this.

Q. Myers' No. one law sheep?

A. Yes, sir.

Q. What year?

A. 1877.

Q. What volume?

A. 37 and eight, I think it was, and since that time.

Q. Is it not true that you charged the Callahans as high as 52 and 53 cents that year for such binding, including the binding and folding?

A. No; I done it on High on Injunctions and High on Receivers, but not on State Reports, if my recollection is right on that.

1247 Q. You are not positive?

A. Without referring to my book, to the best of my knowledge and belief, 47 cents is as high as I charged them for reports.

Q. Charged whom?

A. Callaghan & Company.

Testimony in behalf of defendants as to the damages sustained by the infringement of volumes 32 to 38 embraced in the original bill.

And thereupon defendants, to maintain the issues on their part as to the damages sustained by reason of the infringement of volumes 32 to 38, inclusive, of the Illinois Reports embraced in the original bill, read in evidence the following depositions:

The deposition of Andrew P. Callahan as follows:

1248 Testimony taken before Henry W. Bishop, master, &c., Saturday, the 26th day of March, A. D. 1881.

Present: J. V. Le Moyne, for complainant; J. L. High, for defendant-.

ANDREW P. CALLAHAN, a witness on behalf of the defense on the question of damages, being first duly sworn, was examined in chief by Mr. J. L. HIGH, and deposes and says as follows:

Q. Please state your name in full, residence, and occupation.
A. Andrew P. Callahan; Chicago; law-book publisher.
Q. And you are one of the defendants in this case?
A. Yes, sir.
Q. State what efforts, if any, were made by the defendants to sell copies of the Illinois Reports—of their reprints—from 32 to 38 since their publication and before an injunction was issued.
A. Well, those volumes have not been in print for some years. We printed the other volumes that were out of print prior to
1249 29, and were naturally desirous of giving as large a sale as possible. For that purpose we had our agents canvass the State of Illinois thoroughly and almost constantly for almost three years. For nearly three years after their publication, or up to the time, at least, of the injunction, in addition to which our salesmen were instructed specially to urge their sale in other States, a large amount of capital was tied up in the stereotype plates, and the firm was desirous of releasing it as soon as possible.
Q. What, if anything, was done by way of advertising those reports?
A. Our firm does not usually advertise sets of reports generally, but in this case we made a special effort on the sale of Illinois Reports and did advertise them separately.
Q. To what extent were the sales which you have had of these volumes caused by the special effort which you have mentioned in advertising, etc.?
A. Of course they were increased; in what proportion they were increased from the general business I am not able to state; they were certainly increased.
1250 Q. Do you say they were largely increased or largely the result of such efforts?
A. They were largely the result of such efforts.
Q. State whether the firm, during the time in controversy, employed travelling men?
A. During that time they employed from three to five travelling men—that is, from 3 to 5 trevelling men on the road. One of them was a member of the firm.
Q. When you speak of instructions to urge these books—the sale of them—do you mean instructions were given to these travelling men?
A. All of them.

Mr. LE MOYNE: Question and answer objected to.

The WITNESS: I will state this, that more than ordinary efforts was made to sell those reports outside of the State of Illinois. I was going on to state that in consequence of those efforts a large number of these setts were sold in other States than Illinois. A much larger proportion of setts was sold than were ever before sold of that sett outside of the State.

1251 Q. State whether the order which the firm received for those reports came principally from the travelling salesmen of whom you are speaking or other sources.

A. Almost wholly from travelling agents.

Q. How long have you been engaged in the business of publishing and selling law books?

A. Nearly fourteen years.

Q. State whether you are familiar with the usage and customs of law publishers generally.

A. I am.

Q. State whether you are familiar specially with the usage of law publishers and in connection with the publishing and sale of law reports.

A. I am.

Q. I will ask you whether there is any special usage among law publishers as to publishing volumes of law reports, as to whether they are stereotyped or not; if so, what is it, the usage?

A. I believe it is nearly universal to publish any book that is permanent in its character, especially a law report, to stereotyye the book; to stereotype any book that does not or is not to be

1252 changed from time to time or corrected or changed; any law book of that character it is the usage to stereotype from economical motives, and I believe that to be the most universal custom.

Cross-examination by Mr. LE MOYNE:

Q. Before the publication of these reports, Mr. Callahan, did you keep any travelling men on the road; and, if so, how many?

A. We kept about the same number.

Q. And that has been about your usual number since you have been in the business, hasn't it?

A. Yes, sir.

Q. And the travelling men were selling all your books, I believe, as far as they could?

A. They were not selling these books specially.

Q. So far as they could?

A. Yes.

1253 And thereupon defendants read in evidence the deposition of James E. Callahan as follows:

Testimony taken before Henry W. Bishop, master, &c., Saturday, the 26th day of March, A. D. 1881.

JAMES E. CALLAHAN, a witness on behalf of the defendant-, being first duly sworn, was examined in chief by Mr. HIGH, and deposes and says as follows:

Q. State your name in full and residence and occupation.

A. James E. Callahan; Chicago; cashier and book-keeper of the firm of Callaghan & Co., defendants.

Q. I will ask whether you have made any examination of the books of the defendants, Callaghan & Co., with reference to the number of volumes of their reprint of Illinois Reports in question, from 32 to 38, which were sold and the amount received on those sales, together with the cost of producing those volumes.

A. Yes, sir; I have made a very thorough examination, as thorough as the books will allow, I think.

Q. Look at the statement which I now show you and state what that is.

1254 A. It is the result of our search through the books to find out the number of volumes sold, the receipts of those volumes, and the cost of producing them—the expense of running the business.

Q. Did you make this examination yourself?

A. Yes, sir; in conjunction with another; two of us made it.

Q. Who assisted you?

A. Well, sir, Mr. Beck.

Q. Who is now present?

A. Yes, sir.

Q. What is his connection with the firm?

A. He is there in the capacity of book-keeper.

Q. I will ask whether this is a correct statement of the number of volumes sold, with the prices received and the cost of producing them.

A. It is as correct as could possibly be obtained after an examination of our books, in which all records are kept.

Mr. HIGH: I now offer in evidence this paper and desire the same to be marked Exhibit A to the deposition of James E. Callaghan.

Q. You may explain each of these items in detail, beginning with the first column and going right through the entire statement.

A. The first column is nothing more or less than the volume- 32 to 38.

1255 Q. The number of each volume, you mean?

A. The number of the volume—yes. The second column is the number of copies of each volume sold. The third column is the total receipts for each volume—that is, the aggregate number of each volume.

Q. Do you mean by that the gross receipts for the entire number of that volume sold?

A. Yes, sir. The next column is the average receipt per volume of each. The column following embraces the cost of the stereotyping and composition of each volume. The next column embraces the cost of the paper. After that we have the cost of press-work of each volume; then the cost of binding; then the cost of editorial work and proof reading; the next column, the expense of doing the business—seventeen per cent. of the total cost of each volume; the cost of the volumes on hand; then the cost of volumes sold. That is all.

Q. With reference to the second column, I think?

A. The number of copies sold?

Q. Yes; with reference to the second column of the exhibit, which, you say, represents the number of copies of each of the vol-
1256 umes sold, and also the third column, which, you state, represents the gross receipts for the number of copies of each volume so sold. State from what books or sources do you obtain this.

A. The sale book, sir; from our sales books.

Q. What are those sales books, and how are they kept?

A. They are books of daily record of sales, in which every sale that is made is entered when made.

Q. Is the price entered in connection with the sale?

A. The price is also mentioned and the number of volumes and the name and address of the parties to which they are sent, and the manner of shipping—that is, whether by express or by freight, or what express, or by mail.

Q. State, if you please, in what manner you made up those columns from those sales books.

A. Going over the sales books, sir, page by page, examining every charge and seeing whether or not all the volumes in question were contained in this, and then by a method of computation,
1257 finding out, as near as we could, what we got for those volumes—that is, the column showed receipts. The manner of finding out what we got for those volumes was rather long and somewhat difficult; first to take the price given in the sales book for the entire set.

Q. You are speaking now of where they are sold in sets?

A. In sets; of course, we sold separately; it is simply a matter of computation, but when sold in a whole set from that we would deduct the selling price of Freeman's volumes.

Q. Which are those?

A. 47 to the last; and the remainder that we would get after selling Freeman's we would divide by forty-six, which would give us the average price of our own.

Q. Why did you deduct the price of Freeman's volumes from 47 to the end of the series in those cases?

A. To get at the price we got for our own volumes.

Q. State whether there is any arrangement or contract, and, if so,

what, by which you are bound as to a certain selling price for Freeman's volumes, 47 to the end of the series.

A. Freeman's volumes, 47 to 80, we sold at $3.50 a volume,
1258 with the exception of volumes 73 and 74, which were sold at $2.25 per volume, and that was the price of the volumes after volume 80 up to the present time.

Q. Is that by virtue of any arrangement or contract between your firm and Freeman?

A. Well, it is a contract, inasmuch as if we go below that; we do not make any money on them. I do not know whether I am exactly prepared to say. I have not been there long enough to say whether there was a contract or not. Mr. Beck can tell you more than I about that when he is put on the stand.

Q. Were those prices for the volumes 47 to the end of the series which you deducted in computing the cost of the volumes 32 to 38, as you have testified, when sold in setts the same prices at which the firm sold the volumes 47 to the end of the series separate from setts?

A. Yes, sir.

Q. Now, I will direct your attention to the column headed expense, seventeen per cent. State, if you please, what that represents.

A. It represents the cost of running the business there.

1259 Q. I will ask whether you made that computatian of expense yourself or whether it was made by some other person; and, if so, by whom?

A. I did not make it, sir; it was made by Mr. Beck.

Q. The other book-keeper?

A. The other book-keeper—that is, when I say that I say he figured out the expense, and then I figured out this column here—the proportion it bore towards the reports in question.

Q. All the other figuring and all the other columns were done by you except the expense?

A. For that matter, it was all done by me, and I might almost say all done by both of us.

Q. But the expense he figured himself in the first instance?

A. Yes, sir; in the first instance.

Q. Calling your attention to the column following that of expense, which is headed total cost, state, if you please, what that represents.

A. That represents the cost of the plate, paper, and press-work and binding and stereotyping and composition, and so forth, and editorial work; also the expense.

Q. That is the entire total, then, as I understand, the cost for the volume?

A. Yes, sir.

1260 Q. I call your attention to the next column, which is headed cost of volumes on hand; state, if you please, what that represents.

A. Well, there is a certain number of volumes that we had on hand at the time that we stopped selling—that is, some of them were in sheets in the storing-room; others in the bindery in the process of binding, and some of them in the store, actually in stock; those

were delivered over, and that represents the cost of those volumes—what they actually cost us.

Q. Calling your attention to the last column, state, if you please, what that represents.

A. That represents the total cost of the edition—the printing of each volume, less the cost of volumes on hand; or, in other words, the actual cost of volumes sold.

Cross-examination by Mr. LE MOYNE:

Q. How long have you been keeping the books of the firm?

A. I have been with the firm since——

Q. How long have you been keeping the books, I say?

A. Well, I am now there as much in the capacity of book-keeper as I am of cashier.

1261 Q. Then these are not books you have kept?

A. No, sir. Some of them were taken from books that I kept and part of them I did not.

Q. Which of these were taken from books that you kept?

A. Well, sir, the part of it embracing the cost of books was taken from books that I kept. I guess most of the columns after the third.

Q. Those were taken from the books that you had kept?

A. That I have kept.

Q. How long have you kept them?

A. Since last August.

Q. Then you only commenced keeping any of the books from which any of it is taken last August?

A. Last August.

Q. Were a good many of those books sold in the set.

A. I guess originally four out of every five were sold in sets.

Q. What do you mean by originally?

A. I mean by that that they were sold before they were reprinted. When the sets were sold they were deducted out, so much per volume from the sets.

1262 Q. No; I am asking you about the sales made by Callaghan & Co., of the reports in question; were many of those sold in sets?

A. Yes, sir.

Q. And you say four out of every five were sold in that way?

A. I think so; yes, sir.

Q. Four-fifths, then, of the volumes in question were sold in full sets, of Illinois Reports?

A. I think so, sir.

Q. Is that the information that you have obtained from examination of the books?

A. Derived from examination of the books; yes, sir.

Q. When you made the estimate as to cost of production did you charge up the stereotyped plates to the books published?

A. Yes, sir.

Q. You allowed nothing, then, for the value of the stereotyped plates that they have on hand?

A. Nothing, sir.

Q. The whole cost, then, of stereotyping the plates was charged to the volume sold or to the volume printed? How did you charge them?

A. We charged them to the volumes printed.

Q. I see you have the cost of those on hand and the cost of those sold; now, in which column is the cost of stereotyping the

1263 plates computed?

A. It is in the column of the cost of volumes sold.

Q. Then you have charged the whole cost of the stereotype plates to the volume sold?

A. Yes, sir.

Q. One column is editorial work and proof-reading; does that represent the full cost for the preparation of those volumes?

A. Yes, sir; as our books show.

Q. Who fixed the amount included in the column headed expense, seventeen per cent.?

A. Who fixed it?

Q. Yes; who fixed the amount to be inserted in that? It is an estimated amount?

A. Yes, sir.

Q. Who made the estimate?

A. Mr. Beck.

Q. You don't know anything about it, then?

A. No, sir.

Q. You just put it in because he told you to?

A. I took his figures. I found seventeen per cent. was the estimate; at least, I took his figures as seventeen per cent. as being the average expense of doing the business for four years, and then I made my computation from that.

1264 Q. That is to say, you have no knowledge that that is a correct estimate of the expense except his information of it?

A. That is all.

Q. That is all you know about it?

A. That's all.

Q. Is there anything on this exhibit to indicate how many volumes on hand there are, of which you give the cost?

A. Bound and how many unbound? No, sir; nothing in that.

Q. You don't show that in this table?

A. All of that; no, sir.

Q. Well, part of them are bound and part are not bound, are they not?

A. Of those on hand?

Q. Yes, sir.

A. Yes, sir; some are bound and others in sheets.

Q. Did you estimate the cost of those?

A. Of those volumes? Yes, sir.

Q. That is estimated, too?

A. Yes, sir.

Q. Who made that estimate?

A. I did.

Q. Is this column total cost estimated?

A. Yes, sir.

Q. Who did that?

A. I did—that is, I had the data given me in the one instance by Mr. Beck.

1265 Q. And then you made an estimate on that?

A. Yes, sir.

Q. You mean the information furnished you by Mr. Beck was his estimate of the expense—seventeen per cent.?

A. That is it, sir. The rest of the computation was done by myself.

Q. You have testified something about a contract with Mr. Freeman. What do you know about such a contract?

A. I did not give any testimony about such a contract, sir.

Q. Well, now, what price did you deduct per volume for what you call Freeman's volumes from the price you receive per set?

A. Three dollars and a half for all volumes from 47 to 80, with the exception of 73 and 74, and for those volumes and all volumes after 80, $2.25.

Q. In making the deductions for these volumes which you call the Freeman volumes did you include in that estimate anything for a cost of doing business on those volumes?

A. The cost of doing business was obtained after all that was done.

Q. That is, after you had deducted the price of Freeman's volumes?

A. The price of the Freeman volumes.

Q. Leaving them, what did you compute as the price of

1266 other volumes and the Myers volumes, and from those volumes then you deduct what was left, and from that deduct the seventeen per cent. cost?

A. Our manner of doing that was this: We found it cost us seventeen per cent. of doing business.

Q. Your whole business?

A. Yes, sir; therefore we said the seventeen per cent. of those volumes should be charged up to those volumes.

Q. That is, the seventeen per cent. was not the cost of selling the volume, but the cost of the whole business?

A. No, sir; it is not it.

Q. What is it?

A. Seventeen per cent. was the cost of doing our business—our whole business. To get at that we said: We took our total receipts for the year, then we took our expenses on all of the business for the year—that is, at what proportion the expense bore to the total receipts. We found it was seventeen per cent., therefore we said seventeen per cent. of the total receipts on those volumes should be charged up to this volume. Now, the total receipts of these volumes is embraced in the third column as seventeen per cent.—is embraced in column of expense.

1267 Q. Then I understand you to say that in fixing the seventeen per cent. as the expense it was a computation made on your whole business?

A. Yes, sir.
Q. Including lawsuits for bad debts?
A. Mr. Beck will have to answer that; he computed that expense.
Q. You don't know?
A. No, sir. I know it don't include that, though.
Q. Then it was not the expense of selling these reports, except so far as they constituted a part of the whole business of the firm?
A. It would be impossible to get at that, sir.
Q. And you do not attempt to get at it?
A. I do not attempt an impossibility.
Q. Was the price that you computed, where the volumes were sold in sets, made equal on all the volumes except the Freeman volumes?
A. Yes, sir.
Q. In this computation?
A. Yes, sir.
Q. That is to say, after deducting what you call the Freeman volumes?
A. We divide it by forty-six.
Q. Which included the number of volumes prior to the volumes now in dispute?
1268 A. Yes, sir; and which were always held at a higher price.
Q. I did not ask you how they were held; I ask you how you made your computation?
A. Yes, sir; that is it.
Q. So, then, the price which you fix here you estimate as the value of these particular volumes when sold in sets with thirty-one others, giving them an equal value with the thirty-one others?
A. Yes, sir.
Mr. HIGH: You mean the thirty-one preceeding?
A. Preceeding.
Q. Well, then, the volumes that you fixed as equal included 39 to 46, didn't it?
A. Yes, sir.
Q. And they are figured in at the same price as from 32 to 38?
A. Yes, sir.
Q. In your estimate?
A. Yes, sir.
Q. And from one to 31?
A. 1 to 31; yes.
Q. In making up this estimate, what has been the computation as to the cost of binding per volume?
A. It was taken from our binder ybill.
Q. Well, did you put on this expense, total amount, the bills
1269 from the bindery or did you put it down so much per volume?
A. So much per volume.
Q. That is, your books show an examination of each volume?
A. Yes, sir.
Q. And you took it from examination in that way?
A. Yes, sir.

Q. Can you tell how many copies of each volume that were bound were deposited in the court since this injunction was filed?

A. I hav-n't a recollection of it. I have seen the number, but I do not recollect.

Q. How did you prepare this statement without knowing?

A. I knew at the time.

Q. At the time that you made this statement?

A. Yes, sir.

Q. Did you know how many of the volumes in that ever were bound?

A. It was all down in the statement.

Q. At the time that you made the examination?

A. Yes, sir.

Q. I shall have to ask you to bring those figures here for the purpose of cross-examination. I want you to explain the difference, if the column marked cost of volumes on hand includes all

1270 the cost of the volumes turned over and deposited in court.

A. It does.

Q. Now, for example, of volume 36 you have got the total cost of volumes on hand $13.68?

A. Yes, sir.

Q. What does that represent; is that the total cost of the volumes of 36 now on hand?

A. That we delivered in court; yes.

Q. And that represents all those volumes cost in any way?

A. All they cost us. Well, I said early in my examination that the cost for plates was not taken into account for the cost of volumes on hand.

Q. Now, volume 33, under the column cost of volumes on hand, is the amount, forty-six dollars. Q. Does that amount, $46—is that the total cost of the whole number of copies of that volume on hand?

A. Yes, sir.

Q. That is all the copies of that volume on hand cost the defendants?

A. Yes, sir; that always embraces the item of the plates in that column, which we do not include.

Q. Yes; except any proportion of the plates.

A. The plates are not included in that.

Q. Well, it embraces, then, every other item of cost that you

1271 have included in the estimate, except the cost of stereotype plates?

A. We did not figure that in.

Q. Well, I am asking if it embraces everything else but that?

A. That is asking me to acknowledge that the plates cost more in proportion to these volumes.

Q. No, no; you don't understand my question. I said, Does this item of $46 include all the volumes of that number 33 which were deposited in court—cost the defendants, excluding and excepting the cost of stereotyping?

A. Yes, sir.

Q. It embraces all other cost?

A. It embraces the cost of these volumes. The cost of stereotyping does not belong to that.

Q. I mean the copies turned over?

A. Yes, sir.

Q. Now, is that true in regard to all the amounts in that column?

A. Yes, sir.

Q. Do you know what proportion of the copies printed of any one of the volumes was sold?

A. This is nothing more than what is given there.

Q. Does this give it?

A. Yes, sir.

Q. State why it gives the number of copies printed. I am
1272 asking what proportion of the number printed of any one volume was sold; was one-half sold, or one-third, do you know?

A. I know approximately.

Q. Well, what volume; can you state approximately what portion of the number printed was sold?

A. The first volume.

Q. Volume 32?

A. Yes, sir.

Q. What proportion of that was sold?

A. There was an edition of five hundred and seventy-five copies printed, I think, of which four hundred and twenty-eight, the number given there, were sold.

Q. Leaving how many unsold?

A. About one hundred and fifty-six, I should say. May I ask if that is a copy of the number of volumes as delivered here?

Q. I believe it to be. Do you wish to look at it?

A. Not particularly, except there is a difference in the number of papers sent up here and the number actually delivered.

Q. You may examine it if you can tell whether that is correct. Look at the paper now shown you, which purports to be a memorandum of the number of the volumes delivered to the clerk.
1273 Observe volume 32. It is stated that thirty-six of those delivered to the clerk were bound and one hundred and thirty were in sheets. Does that correspond with your recollection; is that correct?

A. It looks to me to be correct, sir.

Q. Now, do you mean to say that the total cost, not including stereotyping of the forty-six bound volumes and one hundred and thirty sheets, was $63.61?

A. Yes, sir.

Q. Now, state from that memorandum how many copies of volume 36 were delivered.

A. Forty-three is down here.

Q. How many of those were bound?

A. Thirteen.

Q. Now, do you mean to say that the total cost of the 36 volumes, not including stereotyping, is $13.68?

A. I do, sir.

Q. How many copies of volume 38 were delivered, if you can tell by looking at that memoranda?

A. It seems to be three hundred and seventy-three.

Q. How many of those were bound?

A. Thirteen.

Q. Can you state what was the total cost to the defendants of those volumes, not including the stereotyping?

1274 A. $87.83.

Q. How many copies of volume 34 were delivered to the clerk?

A. 326.

Q. How many were bound?

A. 16.

Q. What was the total cost to defendants of those volumes, not including stereotyping?

A. Volume 34, $69.18.

Q. Of volume 35, how many were delivered?

A. 234.

Q. How many were bound?

A. 14.

Q. State the total cost to the defendants of those deposited, excluding stereotyping?

A. $74.21.

Q. Now, of volume 36, how many copies were delivered to the clerk?

A. 43 is what there is by this paper.

Q. How many were bound?

A. 13.

Q. State the total cost, exclusive of stereotyping, of the volumes so deposited?

A. $13.68.

Q. How many copies of volume 37 were delivered?

A. 142.

Q. How many were bound?

A. 12.

1275 Q. State the total cost to the defendants, not including stereotyping, of the copies deposited?

A. $49.81.

Q. Of volume 38, how many were deposited?

A. 373.

Q. How many were bound?

A. 13.

Q. State the total cost, exclusive of stereotyping, of the copies so deposited?

A. $87.83.

Redirect examination by Mr. HIGH:

Q. You have said that the column in your exhibit headed cost of volumes on hand does not include anything on account of stereotyping and composition, as I understand it?

A. No, sir.
Q. Does it include anything on account of editorial work and proof-reading?
A. No, sir.
Q. Then you mean to be understood that those two items are not included in the estimate of cost of volumes on hand?
A. No, sir.
Q. Does it include the cost of paper?
A. Yes, sir.
Q. What other items?
A. Press-work, printing, and binding.
1276 Q. In estimating the expense of seventeen per cent. pertaining to the sales of these different volumes, on which of these volumes have you figured the seventeen per cent.?
A. On the third column; the total receipts of volumes sold.
Mr. LE MOYNE: Are you one of the defendants?
A. No. sir.

EXHIBIT A to Deposition of James E. Callaghan.

Volume.	Number of copies sold.	Total receipts.	Average receipt per volume.	Stereotyping and composition.	Paper.	Press-work.	Binding.	Editorial work and proof-reading.	Expense, 17%.	Total cost.	Cost of volumes on hand.	Cost of volumes sold.
32	428	1,990 91	4 65	706 79	"50 188 62	46 50	236 56	100	338 45	1,616 92	63 61	1,553 31
33	421	1,971 73	4 68	554 45	158 29	35 62	218 80	100	335 19	1,402 35	46	1,356 35
34	409	1,884 24	4 60	416 02	10 128 12	27	231 66	100	320 32	1,223 12	68 18	1,153 94
35	415	1,945 09	4 68	617 38	6 165 64	40 50	235 77	100	330 66	1,489 95	74 21	1,415 74
36	416	1,933 47	4 64	698 51	118 12	33	219 17	100	328 68	1,497 48	13 68	1,483 80
37	410	1,878 68	4 58	542 69	155 92	35 62	219 84	150	319 34	1,423 44	49 81	1,373 63
38	410	1,847 07	4 50	713 70	109 72	72 10	228 16	150	314	1,587 68	87 83	1,499 85

1277 And thereupon defendants read in evidence the depositions of George W. Beck as follows:

Testimony taken before Henry W. Bishop, master, &c., Saturday, the 26th day of March, A. D. 1881.

GEORGE W. BECK, a witness on behalf of the defendant-, being first duly sworn, was examined in chief by Mr. HIGH, and deposes and says as follows:

Q. Please state your name, age, residence, and occupation.
A. George W. Beck; Chicago; book-keeper for Callaghan & Co.
Q. How long have you been in the employ of the defendants, Callaghan & Co., and in what capacity?
A. About six years; the principal portion of the time as shipping clerk.
Q. Up to what time as shipping clerk?
A. Up to May, last year—May, 1880.
Q. Since then in what capacity?
A. Book-keeper.
Q. State whether you have made from the books of Callaghan & Co. an estimate of the expense of transacting their business during the years 1877, '78, '79, '80.
A. I have.
1278 Q. Look at the statement which I now produce and state what that is; state generally.
A. The whole statement shows the expense of running the business—doing the business—for each year.

Mr. HIGH: I offer in evidence the statement in question and desire the same to be marked Exhibit "A" to the deposition of George W. Beck.

Q. You may explain in detail this statement and the different figures and items therein set forth.
A. The first column consists of the general expenses of doing the business for the year.
Q. What do you include in that?
A. The salaries and all incidentals and general expenses connected with running any business.
Q. Does that include rent?
A. No, sir.
Q. Is that in a separate column?
A. Yes, sir; there is a separate column for rent.
Q. What other items besides salaries have you put in the first column?
A. General expenses, such as postage stamps; it is hard to tell the general expenses that come up every day in the expense
1279 of running business.
Q. Does it include fuel?
A. Yes, sir.
Q. Go on and state what is in the next column.
A. Travelling expense for the year.

Q. What does that include?

A. What it costs to keep the travelling men on the road for th year; their railroad fares, hotel bills, &c.

Q. What were those travelling men engaged in during thes years?

A. Selling law books.

Q. For the defendants?

A. For the defendants.

Q. And what is the next column?

A. Is our insurance expenses.

Q. The next?

A. The next is rent; the next is interest for the year.

Q. What does annual interest represent?

A. The interest on paper discounted.

Q. Well, what else?

A. All the items of expense.

Q. The next column?

A. Consists of the total expenses for the year; next our sales fo the year.

Q. You mean your gross sales of law books?

A. Yes, sir; for the year.

Q. And the next?

A. And the last column is the average per cent. of doing the business—the per cent. of expense of doing the business.

1280 Q. I will ask you to state whether these different columns are accurate statements of the different items of expense therein mentioned for the years in question.

A. Yes, sir.

Q. How is it with regard to the column of sales?

A. This is an accurate record of our sales for the year—the total amount of our sales.

Q. From the examination thus made what do you find to have been the expense of doing the business for the years 1877, '78, '79, '80?

Mr. Le Moyne: Objected to.

The Witness: The average expense for 1877 was 18½ per cent.; for 1878 it was 18¾ per cent.; for 1879 it was 17 per cent.; for 1880 it was 15½ per cent.

Q. What do you find to have been the average expense for the entire four years?

A. For the four years it would make the average expense 17 per cent.

Q. You mean by that it has cost the firm 17 cents to effect every dollar of sales during that time?

A. Yes, sir; on the average for four years.

Q. Which of these columns of expense in the exhibit includes advertising?

A. The first column.

1281 Q. Look at the statement, Exhibit A of deposition of James E. Callaghan, and state whether you assisted in the

preparation of any of the figures therein shown; if so, what did you do?

A. I assisted in ascertaining the number of copies of each volume sold, with the total receipts for each volume and the average price per volume.

Q. You mean you assisted James E. Callaghan in doing so?

A. Yes, sir.

Q. State how that work was done and from what data the figures were derived.

A. By going through the sales book and taking every sale of Illinois Reports.

Q. What are those sales books, and how are they kept?

A. They are a general record of sales for each day.

Q. Do you mean that they are the books of original entry showing the sales?

A. Yes, sir.

Q. Just as they are made?

A. Yes, sir; just as they are made.

Q. How many of these volumes did you compute there during the period in question?

A. Eleven volumes.

Q. State whether the columns there shown on the Exhibit A of James E. Callaghan's deposition, representing the number of
1282 copies of each volume sold and the aggregate price received therefor, are correct statements of those matters.

A. They are; yes, sir.

Q. Who kept these sales books?

A. I did up to May, 1880.

Q. Is there any item or column in the statement, Exhibit A of James E. Callaghan's deposition, which was prepared by you; if so, which?

A. No, sir; there is not.

Q. How is it with regard to the 17 per cent. which he takes as the estimate of the expense of doing the business; who furnishes him with that?

A. I furnished him with the 17 per cent.

Q. And he figured that column on the basis of 17 per cent.?

A. Yes, sir.

Q. 17 per cent., as I understand, is the result of your examination, as shown in your Exhibit A, which you gave to him in making his computations?

A. Yes, sir.

Q. State whether your estimate of 17 per cent. as the expense of doing the business you have included losses or bad debts.

A. I have not; no, sir.

Q. Did you hear the testimony of James Callaghan with ref-
1283 erence to the method of computation on sales of complete setts, to be deducted for the Freeman volumes, from 47 to the end of the series?

A. Yes, sir.

Q. Who owned the volumes of Illinois Reports from one to thirty-one, inclusive?

A. Callaghan & Company.

Mr. LE MOYNE: I object to that.

Q. Does any other publisher or firm own or control those volumes?

Mr. LE MOYNE: Objected to.

A. No, sir.

Q. At what prices have the defendants, Callaghan & Company, sold the volumes of Illinois Reports from one to thirty-one, inclusive, during recent years, if you know?

Mr. LE MOYNE: Objected to.

A. From one to thirty-one our average price, in sets, would be five dollars per volume; in odd volumes would be from six to seven and one-half.

Q. You say your average price in sets; you mean in sets of thirty-one?

A. Yes, sir; I mean in sets of thirty-one.

Cross-examination by Mr. LE MOYNE:

Q. In Exhibit A to your deposition I understood you that the first column, headed "general expenses," includes salaries?

1284 A. Yes, sir.

Q. What else is included in that column?

A. Advertising.

Q. What else?

A. Gas, fuel, and postage; general and miscellaneous expenses connected with the business.

Q. Were any of the partners drawing salaries?

A. I could hardly state, sir.

Q. If you made this could you not tell who drew the salaries you have included here?

A. You might call it they were drawing salaries, in one sense.

Q. Well, what do you call it?

A. Well, I would not call it salaries.

Q. Did you include it in this column?

A. Yes, sir; it is in there.

Q. That is, the amount drawn by the different members of the firm during all these suits is included in this column of general expense.

A. No, sir; not all the amounts.

Q. Well, how much and what amount?

A. I should say there was three thousand a year for each member of the firm.

Q. Is that included in this?

A. Included in there; yes.

Q. How many members of the firm are there?

1285 A. There are four now.

Q. In 1877 and 1878 were there more than four or just the same?

A. No, sir; just the same; one went out and others came in.

Q. Well, I understand you to say that the three thousand dollars was not all that was drawn by the different members of the firm?

A. Yes, sir.

Q. Is that what you mean to say?

A. It was not all.

Q. Can you swear that that is all that is included in this statement of general expense, three thousand dollars per year for each member?

A. Yes, sir; I think I would be safe in saying that.

Q. You think you would be safe?

A. Yes, sir.

Q. Well, do you know whether it was or not, or are you merely making an estimate in your own mind now?

A. I am judging when I went on the books; I would not state positively what was credited to each member of the firm before I went on the books.

Q. When was that?

A. May, 1880.

Q. Then prior to that time you are not prepared to say but
1286 what there was more than three thousand dollars included in this?

A. No, sir.

Q. Your best recollection is since May it did not exceed three thousand dollars a piece that you included in this?

A. Yes, sir.

Q. Now, in making up this statement I suppose all you undertake to say is that it represents what now appears on the books?

A. Yes, sir.

Q. Did you make any estimate as to the expense of doing the business for the year preceeding 1877?

A. No, sir.

Q. From your own knowledge of the books, was it about the same as 1877?

A. Yes, sir; I should judge so.

Q. Or was 1876 about the same?

A. About the same as this.

Q. I see the percentage for 1877 you have figured 18½ per cent.?

A. Yes, sir.

Q. Was it about the same in 1875 and '6, the two years preceeding 1877?

A. I should say it would be about the same; yes, sir; average just about the same; yes, sir.

1287

Exhibit A to Deposition of George W. Beck.

	General expense.	Travelling expense.	Insurance.	Rent.	Interest.	Total expense.	Sales.	Expense average.
1877	31,167 49	6,182 41	498 75	4,168 88	2,250 94	44,267 97	239,778 07	18½ %
1878	37,145 99	7,673 89	251 25	2,518 33	2,367 72	49,957 18	241,067 83	18¾ %
1879	39,638 44	5,512 69	360 50	2,595 00	2,316 16	50,522 79	296,776 56	17 %
1880	35,207 89	1,630 25	558 96	3,000 00	613 87	41,010 97	264,927 35	15½ %
								69¾ %*

*Average, 17 %.

1288 Testimony taken before Henry W. Bishop, master, &c., Thursday, the 31st day of March, A. D. 1881.

Present: Mr. Le Moyne, for complainant; Mr. High, for defendant-.

GEORGE W. BECK, a witness on behalf of the defendant-, being recalled, was examined in chief by Mr. HIGH, and deposes and says as follows:

Q. In your previous examination you have stated that in your exhibit of the expenses of Callaghan and Company during the year in question you have included salaries paid to members of the firm; state how much you have included on account of such salaries for each of the years in question and the amount of each year.

A. For the year 1877, $12,000; for the year 1878, $12,500; for the year 1879, $12,750, and 1880, $13,000.

Q. Were those the entire amounts paid to the members of the firm on account of salaries for respective years named?

A. Yes, sir.

Q. State whether the members of the firm receiving these salaries were actually engaged in the management of the business of the firm during these years.

1289 A. Yes, sir; they were all individually engaged during these years.

Cross-examination by Mr. LE MOYNE:

Q. Under what heading in your former exhibit were these amounts paid for salaries named?

A. In the first column.

Q. That was under general expenses?

A. Yes, sir.

Q. What other expenses were included in that column?

A. Advertisements.

Q. How much was paid out for advertising?

A. I can't tell without going through the account; the amount for advertising in this year is in the general expenses.

Q. What you call the general expenses?

A. Yes, sir.

Q. What else?

A. Salaries of employees.

Q. Can you state how much that is?

A. No, sir; such expenses as for postage, gas, and fuel are under miscellaneous and general.

Q. Can you state the amount of any one of these items which are included in the year they were made, outside of the salaries I have just stated?

A. No, sir; I cannot.

Q. How could this show by producing your memoranda?

1290 A. I would have to go through the account; I can't tell you now.

Q. I would like to have you specify what the item of expenses paid is included in the item.

A. I have told you.

Q. Is that all of them?

A. Yes, sir; that is all.

Q. I would like you specify each one of these expenses separately, to whom paid, the expenses for postage, fuel, gas, &c.

A. In addition to such expenses as postage, freight, that is all in the general expenses.

Q. Nov., you have a supplemental or additional account of expenses included in the general expense, and I would like each one of these different amounts by their names.

1291 TUESDAY, *the 14th day of June, A. D.* 1881.

Present: J. V. Le Moyne, for complainant; J. L. High, for defendant-.

Cross-examination by Mr. LE MOYNE continued:

Q. Have you prepared an additional specification of the amount paid for any of the expenses which have been included in the column of general expenses?

A. No, sir; nothing further than is shown in that statement.

Q. You mean the statement now produced for the first time here?

A. Yes, sir.

Q. Will you attach this to your testimony and state what it is?

A. This is a statement showing the amount of salaries paid members of the firm for the four years 1877, 1878, 1879, and 1880, together with the legal expenses paid out on account of this copyright suit in those years, and the balance shows the general expenses of the firm for those years.

1292 Q. In this item of legal expenses do you include all the amounts paid by them for legal expenses for any purpose—for any suits?

A. No, sir.

Q. It is only the legal expenses of this particular suit?

A. Yes, sir.

Q. What other legal expenses are there charged in the general expense account for those years? State generally, and to whom paid.

A. I will venture to say that there was nothing paid except to Mr. High during those years, outside of this suit.

Q. Some three or four hundred dollars?

A. Yes, sir.

Q. And that is all the legal expenses, in addition to this?

A. Yes, sir.

Q. Was there any money charged in the general expense account for expenses at Madison in lobbying or securing contracts or for any work there?

A. I don't know of any expense for lobbying, sir; I couldn't tell.

Q. You don't know of any expense being paid there?

A. No, sir.
Q. For the securing of contracts or for lobbying?
A. No, sir.
Q. You wouldn't know if there was any such item in this general expense account?
1293 A. Yes, sir; I would be very apt to know.
Q. Well, you have gone over it; don't you remember from your examination whether there is or not?
A. I didn't notice when going over it expenses for any such thing as that.

Statement referred to by the witness is offered in evidence as Exhibit B.

EXHIBIT B to Deposition of George W. Beck.

	1877.	1878.	1879.	1880.
B. Callaghan	3,000 00	3,000 00	3,000 00	3,000 00
A. P. Callaghan	4,000 00	4,000 00	4,000 00	4,000 00
A. Callaghan	3,000 00	3,000 00	1,500 00	
S. A. Clark	2,500 00	2,500 00	2,750 00	3,000 00
T. H. Flood			1,500 00	3,000 00
Legal expenses in copyright suit		114 50	1,969 40	
General expenses	31,767 97	37,342 68	35,803 39	28,010 97
Totals	44,267 97	49,957 18	50,522 79	41,010 97

1294 And thereupon defendants read in evidence the deposition of Andrew P. Callahan as follows:

Testimony Taken Before Henry W. Bishop, Master, &c.

TUESDAY, *the* 14*th day of June, A. D.* 1881.

Present: J. V. Le Moyne, for complainant; J. L. High, for defendant-.

ANDREW P. CALLAGHAN, a witness on behalf of the defendant-, being first duly sworn, was examined in chief by Mr. HIGH, and deposes and says as follows:

Q. Please state your name.
A. Andrew P. Callaghan.
Q. Your book-keeper has produced in evidence an exhibit showing the salaries paid to the different members of your firm during the year- 1877 to 1880, inclusive; for what were these salaries paid?
A. For personal services of the members of the firm.
Q. Rendered to the firm in and about their business?
A. Yes, sir.

Q. State whether the members of the firm there named were actually employed in and about the business of the firm during that period.

A. Yes, sir; they were.

Q. If those services charged for by members of the firm had not been rendered by those members of the firm what would
1295 have been the result to the firm's business, so far as requiring additional employment is concerned?

Objected to.

A. Some one would have had to have done the work.

Q. Would you not have been compelled to employ other men of equal experience in the trade in their place?

A. Certainly.

Q. State whether during these years any profits were distributed to or divided among the members of the firm.

A. There never has been a dividend declared in our business; the profits have all gone into the business except these personal service salaries.

Q. Aside, then, from these salaries which you say represent services actually rendered do you mean to be understood that the profits of the business have been reinvested right along, from year to year, in the business?

A. With one exception. Mr. Bernard Callaghan had a surplus of capital in the concern which he has partially drawn out. Of course, that surplus capital which he has drawn out represents a portion of the profits. With that exception there has been no division of profits at all.

Q. And that surplus capital which he has drawn out does not enter into this account in any way?

A. No, sir.

1296 Further testimony in behalf of complainant as to damages sustained by the infringement of volumes 32 to 38, inclusive, embraced in original bill.

And thereupon complainant, to further maintain the issues on his part as to the damages sustained by the infringement of volumes 32 to 38, inclusive, of the Illinois Reports, embraced in the original bill, read in evidence the following depositions, which were taken before Henry W. Bishop, Esq., one of the masters of this court, upon the re-reference to said Bishop as to such damages:

The deposition of E. B. Myers as follows:

1297 In the Circuit Court of the United States for the Northern District of Illinois. In Chancery.

MYERS, Complainant, *vs.* CALLAGHAN *et al.*, Defendants.

Testimony taken before Henry W. Bishop, master in chancery of said court, Saturday, the 8th day of July, A. D. 1882, and 10th of July.

Mr. Cothran, for compl't; Mr. High, for def't.

E. B. MYERS, a witness on behalf of the complainant, being first duly sworn, was examined in chief by Mr. COTHRAN, and deposes and says as follows:

Int. 1. Please state your name, age, residence, and occupation.

Ans. ——.

Q. What was the market value of each of the volumes of the Illinois Reports, No. 32 to 38, inclusive, before and at the time of the publication of the volumes by the defendants?

A. From 7.50 to $11.00 a volume. They brought, in putting them in complete sets to perfect them, $10.00 a volume. We occa-
1298 sionally sold an odd volume of some surplus stock we had on hand for $7.50, but they brought, for filling sets, $10.00; on one occasion as much as $11.00.

Q. What were complete sets selling for in the market in the latter part of 1876 and the first part of 1877?

A. From $470 to $500. I sold myself a set for $498, of 72 volumes.

Q. You have published a good many law books?

A. I have. I have been engaged in publishing law books since 1860.

Q. You published several volumes of reports?

A. Yes; a great many books.

Q. Is stereotyping a volume of reports a necessity or a matter of convenience to publishers?

A. Purely a matter of convenience.

Q. In publishing volumes of reports—Illinois, for instance—about how many copies of a volume are usually printed at a time to form an edition?

A. From 1,000 to 1,500 copies in an edition.

Q. An edition of 1,000 or 1,500 can be printed from type without stereotyping, easily?

A. Yes; very easily.

Q. And at a great deal less expense than stereotyping?

A. Less expense. Many publishers consider that it is cheaper to print a large edition from type than it is to print a moderate edition from stereotyp*ing* plates, with the additional expense of plates, care of them, insurance, interest on their cost, &c., which will
1299 very nearly, if not fully, defray the expense of resetting the type.

Q. In printing an edition of under a thousand copies is it necessary to stereotype?

A. Not at all.

Q. Is it necessary to advertise extensively the sale of your law reports?

A. I never considered it necessary. They are advertised in the catalogues of every publisher in the country, in the tables of reports. They are well known, and it is not necessary to spend money in advertising as it is in the sale of text books, because a series of reports are well known throughout the country. I never found it necessary to advertise further than to insert them in the table of reports in our general catalogues.

Q. Beyond that you deem advertising unnecessary?

A. In my opinion it would be unnecessary. They are advertised by all publishers; they must necessarily do so, because their catalogues would be incomplete if they omitted them.

Q. Is it necessary to employ travelling agents to sell them?

— No; it is not, in my opinion. Of course, it is entirely different with text books that it is necessary to introduce.

Q. Travelling agents are usually sent out to sell text books, are they not?

A. Yes; never have known them sent out to sell reports exclusively.

1300 Q. How many years have you been in the business of publishing and selling law books?

A. 26 years.

Q. During all that time did you ever find it necessary to employ travelling agents to sell Illinois Reports?

A. I never have; I have employed travelling agents for selling general law books, but, of course, if reports are wanted they are sold, but it never would pay to send out men to sell Illinois Reports; in fact, Mr. Freeman, the present publisher, has never found it necessary to even keep a store to sell them; the demand has been sufficient to supply them from his own residence.

A. The sale of reports by such agents is rather an incident than the main object?

A. I believe that to be the case.

Q. You send them out to sell one or more particular books and he takes others if necessary?

A. That is the usual custom.

Adjourned to Monday, July 10, 2 o'clock p. m.

1301 Cross-examination by Mr. HIGH:

Q. You state that you sold your volumes, 32 to 38, along during 1876 and 1877, at from $7.50 to ten and eleven dollars, I think you said?

A. Yes.

Q. Will you present a statement showing the actual sales of those volumes, 32 to 38, to whom sold, where, at what price, and whether separately or in sets during the years 1876 and 1877?

A. I could undoubtedly furnish a statement of that kind, but unless I am compelled to make it up I don't believe I would want to go into it. I can give you numerous instances where they were sold and at what price.

Q. Do you decline to furnish such complete statement?

A. Yes; unless it was necessary; it would entail a good deal of labor on me to do it; of course, other people's examination would not be acceptable to you; I should be compelled to do it myself from my own books.

The witness declines to answer the question, on which the master rules he should do; to which ruling counsel for complainant excepts and desires that the question should be certified to the court.

1302 On the 11th day of July, A. D. 1882, the solicitors of the respective parties being present, the further taking of testimony in said cause before said master is resumed as follows, to wit:

E. B. MYERS, a witness on behalf of the complainant, being first duly sworn, was further cross-examined by Mr. HIGH, and deposes and says as follows:

Int. 1. Please state your name, age, residence, and occupation.

Ans. ——.

Q. Have you books of account or sales books showing the sales by you of Illinois Reports, including volumes 32 to 38, during the years 1876 and 1877?

A. I presume I have, showing part of them at least, where they were so entered. It was not always our custom to note down in every case the exact volume or reports. We might sell a customer a bill and simply enter his name with the amount.

Q. Did you generally note the volumes sold in your sales book?

A. We never were particular to enter the particular book sold of any kind, but we generally enter the name of the buyer in a lump, although I suppose in a great many instances where we sold odd volumes or a few together we may have entered them that way.

1303 Q. Indicating the volumes?

A. Yes, sir.

Q. You did that in 1876 and 1877, I suppose?

A. I presume so.

Q. Have you examined these sales books, during the course of this examination, since Saturday morning last?

A. I partially looked at one; I forget now what book it was; it seems to me it was a petty cash book.

Q. It was one of the books that would indicate the sales of these volumes during these years?

A. Some of them.

Q. You have testified that you sold these volumes, 32 to 38, during 1876 and 1877 at from $7.50 to $11.00 a volume?

A. Yes, sir.

Q. Those sales, as I understand, would appear on your books as you have stated?

A. I don't know whether they would or not.

Q. Some of them would?

A. They might appear there. My recollection is I had not examined the books at all when I gave my testimony.

Q. Your testimony-in-chief, you mean?

A. My direct examination; prior to that time I had not looked at it at all.

Q. You recollect my stating on Saturday last, after your direct examination was closed, that I desired you to make a statement showing the number of volumes in question sold by you and the price and whether in sets or separately during 1876 and '7?

A. I think you said something about it.

1304 Q. Do you recollect that you then expressed your willingness to do so?

A. I think I did; I said something about it.

Q. You then went over and afterwards made this examination of the books of which you have spoken?

A. No; I did not.

Q. When did you make that examination?

A. On Monday, I think it was; I didn't make any examination; I simply run over one book.

Q. On Monday before I began your cross-examination?

A. I am not certain whether it was before I came over here or after I went back.

Q. Was it in the forenoon of Monday?

A. I am not positive about that; it seems to me it was after I went back.

Q. Don't you recollect it was before you refused to the master to prepare such statement yesterday?

A. It might have been before.

Q. When you stated on your previous examination that you had sold the volumes in question, vols. 32 to 38, during 1876 and '7 at from $7.50 to 10 and $11 a volume did you have those sales in mind in stating the market price for those years?

A. No; only in a general way, as I remembered of selling the books at large or high prices since the fire. The prices were high and the thing has been pretty fresh in my mind ever since—

1305 ever since the destruction of part of the stock.

Q. It was a general recollection, then, of your sales, was it?

A. Yes, sir; and of the market value that was generally talked of on the streets among the lawyers, of what the value of the Illinois Reports was. I think the defendant- in this case were selling sets and odd volumes at high prices during all of this time up to the time they announced their reprint. It was a common thing to sell a set of Illinois Reports at from $450 to $500—common talk.

Q. During 1876 and '7 you and the defendants, I believe, were the only law publishing houses in Chicago, were you not?

A. I think we were; that made a specialty of it.

Q. Other publishers, like Jansen & McClurg, were obliged to get their books through you?

A. Not obliged to get them through us.

Q. Through you and Eastern publishers; so you and Callaghan controlled the trade in the city, so far as selling here was concerned?

A. Yes, sir; we tried to control the trade, I guess.

Q. Are you able to state any specific sale of either of the vols. 32 to 38 during the years 1876 and '7, with the time and the prices and the purchaser other than your own sales during those years?

A. I remember of selling a set to the city of Chicago during the fall of 1876 for a little less than $500.

Q. Question repeated.

1306 A. I think Mr. Beckwith bought volumes of the defendants about that time for in the neighborhood of seven to eight dollars a volume.

Q. Have you any personal knowledge of the dates, volumes, and prices?

A. No; I have not.

Q. Only from hearsay and from Mr. Beckwith?

A. Only from hearsay. I presume I could after a time think of sales that were made. I know I bought during that time some of the volumes second hand and paid five to seven dollars a volume, which ones, of course, I could not recollect. We always bought them when we had an opportunity, as we would any other second-hand books.

Q. Then you have no present recollection of any other sales other than your own except those you have just mentioned?

A. I don't think of any now.

Q. Will you now produce the statement which I call for in the beginning of your cross-examination yesterday afternoon?

A. I cannot do so, for I have not anything of the kind prepared.

Q. Do you decline to prepare such statement?

A. Yes, sir; unless it is absolutely necessary.

The master rules that, under the direction of the court, as he understands it, the witness should produce the statement called for, which the witness declines to do.

Q. After the ruling of the master do you still decline to furnish the statement desired?

A. Yes, sir; as directed by my counsel.

Q. Even if made at our expense?

A. Yes, sir.

1307 Counsel for defendants states that defendants will pay whatever expense will be incurred in such examination.

Redirect examination:

Q. In your testimony have you relied upon the entries in your books in the answers you have made on the direct and cross examination?

A. Not in the least.

Q. Do you rely on your general recollection instead of the entries on your books?

A. Yes, sir. Since I have been sitting here I happened to think of some other sales I made. I sold a set to the Chicago, Burlington & Quincy R. R. Co., as near as I recollect, for $460 or $480. I sold another set to a customer in Danville, Ills., for $475. I recollect that, because I bought the set back from him some time afterwards and he had a little feeling about the price for which I bought them back. The set to the city of Chicago which I have named I remember because I was owing them the 25th volume, which I did not deliver for some time, and it was pretty hard to get it. Of course there may be many other sets I could think of during the afternoon, but those come to me because there was some trouble connected with them and they are fresh in my memory.

Counsel for defendant declines to proceed further with the examination until the statement is produced.

And thereupon complainant read in evidence the deposition of George M. Beckwith as follows:

1308 On the 11th day of July, A. D. 1882, the solicitors of the respective parties being present, the further taking of testimony in said cause before said master is resumed as follows, to wit:

GEORGE M. BECKWITH, a witness on behalf of the complainant, being first duly sworn, was examined in chief by Mr. COTHRAN, and deposes and says as follows:

Int. 1. Please state your name, age, residence, and occupation.
Ans. George M. Beckwith *Beckwith*; occupation, law-book seller.
Q. How long have you been connected with law-book selling?
A. About 14 years.
Q. In the city of Chicago?
A. Yes, sir.
Q. During, say, the years 1876 and '7, and in that vicinity, what was the market value of Illinois Reports?
A. I forget whether at that time they had been reprinted or not.
Q. That was just before the reprint and down to the time of the reprint?
A. What volumes of reports?
A. Generally.
A. They varied a great deal in value; of course, those that were out of print were worth a good deal more than those in print.
Q. Take the volumes 32 to 38, inclusive.
A. If that is the time before they were printed by Callaghan & Co. they were worth from $7 to $10 a volume.
Q. The question is prior to the time that Callaghan & Co. put their books in the market.
1309 A. They were well worth $7.50 to $10.00 a volume.
Q. Did you know of sales being made?
A. Yes, sir.
Q. At those figures?
A. Yes, sir.

Cross-examination by Mr. HIGH:

Q. Were you in Mr. Myers' employ during those years, 1876 and '7?

A. Yes, sir.

Q. Was it not a fact that the high prices of volumes 32 to 38 at that time was due to their being entirely out of print?

A. I have previously stated Mr. Myers had quite a number of copies of several of these volumes in stock.

Q. But the plates were entirely destroyed in the great fire?

A. Yes, sir.

Q. Do you recollect any volumes, 32 to 38; he had several in stock in 1876 or '7?

A. At that time the stock was considerably less than it was immediately after the fire; it was quite a small stock then.

Q. You don't recollect any specific volume he then had, do you?

Q. My memory is quite dull now; a couple years ago I stated——

Q. I am asking about your present recollection.

A. I think there were volumes of 36, 37, and 35, I think there were, and 31 he had.

Q. But the high price was due to the fact of the plates being destroyed by the great fire, was it not?

1310 A. If it had not been for the fire they would not have been high-priced; still Mr. Myers had a small stock at that time.

Q. You seem to be anxious to have it appear that Mr. Myers had some of these volumes; are you anxious?

A. The trouble is with me to state whether they are out of print. I stated to a great number of people that they were out of print, and yet, technically, a thing is not out of print until the publishers have sold the last copy.

Q. Myers was buying second-hand copies whenever he could?

A. Yes, sir; and paying high prices.

Q. Publishers do not usually pay high prices for second-hand copies for books they have in stock new?

A. Not usually.

Redirect examination:

Q. What prices were second-hand volumes bringing at that time?

A. We paid six dollars very often for them.

Q. And sold them for what?

A. At all sorts of prices; the highest prices somewhere in the neighborhood of $10.00, I guess.

Q. For a single volume?

A. Yes, sir; maybe as high as $11 occasionally, but sometimes at one price and sometimes at another.

Cross-examination resumed:

Q. Can you mention any—specify—on sale of a new copy of either of the volumes 32 to 38 during the year 1876?

A. No, I cannot; I never was interested enough in them to remember anything about it.

1311 Q. So you do not know of any sales of new ones during those years?

A. I do not remember them.

Q. Was a sales book kept in the store of Mr. Myers during those years in which entries were made of all volumes sold?

A. No; not of all volumes sold. When a volume was sold, if it was sold for cash in the store, I would go to Miss Burphy, or whoever was at the cashier's desk, and state what I had sold and hand the check, and then it would be put down on the cash book.

Q. It would appear there on the sale or cash book?

A. Yes, sir; if it was an order it would go on the order book.

Q. Otherwise, on the cash book?

A. Yes, sir.

Q. So there was a complete record kept in some of the books of all the sales?

A. Not in form of a complete record; it was just according to how business went generally.

Mr. COTHRAN: The record would be kept as they sold on credit?

A. They ought to be entered—all of them.

Q. But cash sales would not necessarily keep a record of the volumes sold?

A. I guess it was the intention of the cashier to keep a record of them.

Q. You don't remember whether there was a full record kept?

A. No; that was not my department at all.

Signature waived.

1312 And thereupon complainant read in evidence the continuation of the deposition of E. B. Myers, upon further cross-examination, with the ruling of Judge Drummond thereon, as follows:

1313 On the 19th day of July, A. D. 1882, the solicitors of the respective parties being present, the further taking of testimony in said cause before said master is resumed as follows, to wit:

E. B. MYERS, a witness on behalf of the —, being first duly sworn, was cross-examined in chief by Mr. HIGH, and deposes and says as follows:

Int. 1. Please state your name, age, residence, and occupation.

MYERS *v.* CALLAGHAN.

Ruling by DRUMMOND, J., as follows:

The question, as I understand it, is as to the market price of certain Illinois Reports at a particular time, and arises on the testimony of Mr. Myers. Now, if it appears, either by the testimony of Mr. Myers or in any other way, that there was an account kept of the sales of these volumes by him in his business, then I think the other party is entitled to the production of these books of account which contain any of those sales to which Mr. Myers refers.

1314 Under the order of court, the witness now produces from his books of sales of volumes of Illinois Reports such entries therein as he is able to identify of volumes sold and the prices at which they were sold and shown by his books, singly or in sets, as the sales were made.

Mr. HIGH: Go on and make such explanation as you desire.

A. This statement is made by our book-keeper from our books and verified by my personal examination — such books as he had to refer to, principally journal entries. Our petty sales books, containing the sales of odd volumes, are missing. They were destroyed or sold for old paper at the time we moved, and so we are unable to give a complete statement of all the sales of separate volumes. This statement commences May 12, 1877, which was just prior to the publication of defendants' books, and runs backward through 1876 and 1875. There are many sales of Illinois Reports sold with other books and were entered in a lump, simply giving the name of the purchaser and the amount, without itemizing the particular volumes of books embraced in the sale; that applies to cash sales. In the sale to R. L. McGinley, May 12, 1877, of a set for $325, for some reason we never had furnished him with volumes 32 and 36, and we settled the matter up by paying him $7.00 a volume for those two volumes, in 1881.

1315 Q. You were not able to furnish him those two, if I understand you—32 and 36.

A. We might have been able to furnish them to him frequently, but the matter was overlooked; I don't know why. He claimed that we owed him those two volumes and wanted it settled.

Q. As a matter of fact, you never did furnish him those two?

A. I couldn't say whether we did or not, but he claimed we never furnished them. We accepted his word and offered to do what was right, and finally settled it at $7.00 a volume.

Q. Have you examined your cash book during this period to see whether that shows any additional sales which do not appear in this exhibit?

A. No; I haven't had time. I have been absent from the city since this was commenced.

Q. Would not an examination of your cash book for that period show the additional sales, if any, which do not appear in this exhibit?

A. If the books were sold for cash they would be in there; if with other books, it would simply give the name of the purchaser without specifying the particular items. I noticed in a casual reference to an old book, in searching for these old sales books, that there were a great many items entered simply — the purchaser's name and Illinois Reports put down in a lump without indicating the particular volume or the price.

1316 Q. You have no recollection of other sales which do not appear in this exhibit?

A. I have a general recollection of selling the books at prices varying from $7.50 to $10 or $12 a volume.

Q. During the year after 1872?

A. All the way from the fire to 1877. We had a good many of them that were saved from the fire. They brought large prices, and we kept them under cover and sold them out, a volume now and then, at large figures.

Q. How many copies of each volume from 32 to 38 did you save from the great fire?

A. I could not tell you exactly; my recollection is they run from 25 to 50, and then we bought a great many second hand; made a great effort to get them.

Q. Aside from your catalogue issued during the years after the fire, down to the commencement of this suit, in which you advertised that you would purchase these volumes in question as second hand, did you advertise in any other way for these reports, 32 to 38, second hand?

A. I don't remember.

Q. You were on the lookout for them generally whenever they could be obtained, were you not?

A. When they were offered we generally purchased if somebody didn't bid more than we did.

Q. A pretty general demand for them among the profession, was there not, during these years, owing to the loss of libraries

1317 by the fire?

A. The demand of course was not near as urgent as it was a year or two after the fire.

Q. I mean during the years immediately following the fire; there was a general demand then?

A. Yes; there was a general demand.

Q. Were not all the law libraries in Chicago nearly all destroyed by the great fire of 1871?

A. A great many of them; I don't think they were all destroyed.

Q. All but a very few, were they not?

A. That is the general impression.

Q. Then you are unable to furnish any other evidence of actual sales of volumes 32 to 38 during the years 1876 and 1877 and prior to the publication of the defendants' volumes than appears in this exhibit?

A. No more, for the reason before stated. I could furnish, probably, sales of a great many more sets going back to that statement.

Q. During previous years?

A. Probably, in 1872, '3, '4, '5, five times as many.

Q. The demand being heavier in those years?

A. Yes, sir; a considerable demand for Illinois Reports all the while; there is to-day.

Q. Did you publish the original edition of volumes 32 to 46, inclusive?

A. I did.

Q. Did you stereotype each of those volumes?

A. Yes, sir.

1318 Q. What other volumes have you published as the owner or proprietor of the copyright and reports complete?

A. Minnesota Reports, 11 volumes. I didn't publish all of them. I think only part of the series. I published either volumes 9 and 10 or 10 and 11, and I bought all the prior volumes.

Q. When did you issue those?

A. I think it was in 1868 or thereabouts.

Q. Did you stereotype those?

A. I did not; printed them from type.

Q. What other volumes of reports except those named have you been the owner of the copyright?

A. Some volumes of Kansas Reports. I didn't own those, but published them for other parties.

Q. Are there any other reports than those you have named where you claimed to own the copyright and publish the- for yourself?

A. I claim to own the copyright of several volumes prior to 31 and the right to publish. I do not strictly claim the copyright, but the right to publish them under the contract with the reporter.

Q. I mean where you own or claim to own absolutely the copyright.

A. I don't think of any other volumes of reports just now.

Q. You republished vols. 37 and 38, Illinois Reports, during the summer of 1877?

A. Yes; I published them during the summer of 1877.

Q. Did you stereotype these?

1319 A. Yes.

Q. Did you republish volume 46 after the great fire?

A. I republished that, I think, in 1876.

Q. Did you stereotype that?

A. Yes; and was very sorry I did so; it would have been much cheaper to have printed the edition from type.

Q. Will you name any series of current reports, State or Federal, published within the last ten years which have not been stereotyped?

A. I am not acquainted with the business of the publishers of any other series of reports, and I am unable to answer that question.

Q. Has not Mr. Freeman stereotyped all his volumes of Illinois Reports?

A. I couldn't say positively; my impression is he does.

Q. He has done so since he began publishing?

A. I don't know whether he has stereotyped them all.

Q. It is your impression?

A. It is my impression that he has.

Q. He began with 47, did he not?

A. Yes.

Q. And has published all to the end of the *weries* himself?

A. I believe he has.

Q. Have you any travelling men in your employ?

A. Not to-day.

Q. Have you had of late years?

A. Yes; one or two.

Q. During what years?

1320 A. I think a part of the years 1879 and 1880—a portion of them, and perhaps a part of 1881.

Q. Did you during the years 1876, 1877, and 1878 or either of those years?

A. I think my son went out on a short trip to get subscribers for the Chicago Legal Journal and doing a little business.

Q. At different times in those years?

A. I think he made two trips of three or four weeks each.

Q. Any other travelling men?

A. I don't remember of any other.

Q. What were your gross sales of law books during each of the years 1877, 1878, 1879, and 1880?

Objected to as not pertinent to the subject of enquiry under the order of reference.

Q. Do you decline to answer?

A. Under the direction of my counsel.

Defendant asks that that portion of the statement produced by the witness showing his sales of the volumes in question during the years 1876 and 1877 be attached as an exhibit to the deposition.

Defendants' counsel reserves the right to further cross-examine the witness after he shall have further examined the exhibit in question.

Redirect examination:

Q. You commenced once or twice to answer something about the volumes of Illinois Reports prior to 32. What do you wish
1321 to say about your connection with the publication of volumes prior to 32?

A. About the time that volumes 17 or 18 were published, I think about 1859 or '60, I had an interest in the firm of D. B. Cook & Co., and they published the volumes from that time up to volume 24, inclusive, commencing with volume 25. I succeeded the firm and published 25 to 31, inclusive.

Q. Prior to the publication of volume 32 of the Illinois Reports were any of the Illinois Reports stereotyped?

A. None at all.

Q. Why did you stereotype the volumes 32 to 46?

A. I found it would be a great convenience to the reporter and to the court to stereotype, because it would enable us to go on along faster with the work and to furnish them with proof from the plates, which enabled them to sometimes correct their statements, and in those cases we could cancel the pages and reproduce in conformity with their wishes. I got in the way of doing it and kept it up.

Q. About how large an edition of Illinois Reports was there printed, say, from volume 20 upwards?

A. About 1,250 copies, and I think with volume 25 we commenced printing about 14 or 1,500, perhaps since volume 46. I don't know of my own knowledge, but I have been informed.

Q. Up to that time you do have knowledge?

A. I think we printed in the neighborhood of 15 or 1,600 up to volume 46, inclusive.

1322 Q. How many copies could you print from type without its being worn materially to affect the impression?

A. Three to four thousand copies very easily.

Q. In stereotyping from 32 to 46, inclusive, was it a necessity or matter of convenience?

A. It was a mere matter of convenience. I made a calculation of the additional cost of stereotyping with the interest on investment, and, in my opinion, it is not necessary to stereotype, but you could print a larger edition from type that would last as long as there would probably be a sale. I think a man that publishes books, if he prints enough to last ten or fifteen years, does about all he wants to.

Q. Until the requirements of the profession would call for new annotated editions?

A. That is my opinion, from my experience.

Q. Then would you say there was any saving in stereotyping an ordinary edition of reports over the publication of a sufficient edition from type in the first instance?

A. None whatever.

Q. The difference being that with stereotyped plates you would print a smaller number of copies additional than you would if printed from type?

A. Yes; very much smaller.

Q. Is there any explanation that you wish to make in relation to the statement from your books about sales in sets or otherwise? If so, make any such explanation as you desire to throw any

1323 light on the subject to the gentlemen on the other side.

A. In selling these sets at that time the price of new volumes, 2 to 18, inclusive—17 volumes—was $5.00 a volume during the years 1876 and 1877, and volumes 47 to the end of the series, prior to March, 1877, was $5.00 a volume; subsequent to March, 1877, they were $3.50 a volume; deducting these amounts from the total amount received for the set gives the value of the volumes that are out of print, of my volumes, 32 to 46.

Cross-examination resumed:

Q. Were these volumes sold by you in 1876 and 1877, as shown on the statement which you have submitted, new or second hand?

A. Part new and part second hand; I could not remember exactly the proportion.

Q. Generally second hand at that time, were they not?

A. The early volumes might have been second hand; probably were.

Q. I understand that your plates of volumes 32 to 38, inclusive, were all destroyed in the great fire?

A. Yes, sir; the volumes prior to that were not stereotyped.

Q. The plates of volumes 39 to 45 were not destroyed in the fire?

A. No; they were not destroyed.

Q. You still have those, have you not?

A. Yes.

Q. You have spoken of having stereotyped 32 to 46 as a matter of convenience to the judges and reporter, about furnishing proof, and so on. Did that same question of convenience influence
1324 you about stereotyping your republication of volumes 37 and 38 in 1877?

A. No.

Q. You did not have to furnish any proofs of those to the judges, did you?

A. No, sir.

Q. Did that question influence you in the republication of volume 46 in 1876?

A. No; I had them stereotyped because I could get that done on a good deal better terms and longer time.

Q. Don't printers give better terms where work is stereotyped than where it is printed from type alone?

A. No; I don't know how that is; it depends entirely on the printer's capital.

Q. Isn't it a fact that type wears out much more readily where books are printed from the type- themselves than as if the types were used merely to produce the stereotyped plate on which the printing was done?

A. Yes; but all printers have font- of type; one for the purpose of electrotyping and the other for printing from the type itself.

Q. When did you first become converted to this doctrine of not stereotyping your reports?

A. About the time these books were being so produced I had talked with Mr. Baker, of New York, and a gentleman in St. Louis, and talked with other parties, and they said in a reprint of a State Report——

Objected to.

They would not stereotype, because it was only——

Objected to.

1325

1877.				
May	12.	R. L. McKinlay, city:		
(32)		Set Ill. Reports, 1–68		325
		(Allowed him $7 pr. vol. for 32 & 36 in 1881.)		
Apr.	10.	Soule, Thomas & W., St. Louis:		
(31)		Ill., vol. 34, 7.50; discount, $1 to trade		6 50
Jan.	16.	D. McDougall, Ottawa, Ill.:		
(30)		Ill. Reports (1–54), set 54 vols.		310
1876.				
Dec.	28.	L. D. Webster:		
(29)		Ill. Reports, vols. 1–73, inclus.		420
Dec.	16.	N. L. Freeman (wholesale):		
(28)		Scammon, vol. 1	5 50	
		Gilman, 1, 2, 4, & 5, @ 5.50	22	
X		Ill., 13, 15, 36, 5.50	16 50	
				44 00

Oct. 16. Van H. Higgins:
(27) Ill. Reports, 71 vols. (1–71, incl.) 350
Oc. 14. (26) Ill., vol. 35 10
Sept. 12. City of Chicago:
(25) Set Ill. Reports, vol. 1–69 & 75, 76, & 77, 72 vols. 498
Aug. 22. Ill. Reports, 70 vols. (1–70, incl.) 400
(24) Needham & Miller.
July 14. Lodge & Huston, Monticello, Ill.:
(23) Ill., vol. 38 10

1876.

May 23. J. J. Teefey, Mt. Sterling, Ill.:
(22) Ill., vols. 19 & 38, @ 12 24
Apr. 7. C., B. & Q. R. R. Co:
(21) Ill. Reports, 68 vols. 440
Feb. 26. Soule, Thomas & Wentworth:
(20) Ill., vol. 38 (wholesale, $\$15\frac{2}{10}$) 12
Jan. 26. D. H. Tripp & Co.:
(19) Ill., vol. 38 (wholesale trade acct.) 5 40

1875.

Dec. 22. (18) R. Bishop, McHenry, Ill.:
1326 Set Ill. Reports, 66 vols. 450
Nov. 3. (17) T. J. Smith, Champaign, Ill.: Ill., 20 & 34, @ 15 30
Sept. 20. Mattood & Robinson, Olvey, Ill.:
(16) Ill., 19, 20, 21, 24, 25, 26, 27, 28, 29, 30, 31, 34, & 35, 13 vols. 100
Sept. 11. Iroquois Co., Ill.:
(15) Ill. Rep's, 29 & 32, @ $15 30
Sept. 1. Rosenthal & Pence:
(14) Ill., vol. 37 18
Aug. 19. Penn'a Co., Pittsburgh, Pa.:
(13) Ill. Reports, vols. 19 to 65, 47 vols. 361
June 28. Wentworth (Moses):
(12) Set Ill. Reports, 63 vols. (1–63, incl.) 455
May 24. Whitehead & Jones:
Scammon, 3 & 4 12
(11) Gilman, 5 vols. 30
Ill., 12, 13, & 18, 3 vols. 18
Ill., vol. 29 ..... 11 50
Ill., vol. 38 10
81 50

1875.

May 17. J. N. Barker:
Ill., vol. 30 12
(10) " " 38 15
Ill., 39 to 45, 7 vols., @ 6 42
69

May 10. Julius Brousseau, Kankakee:
(9) Underwood's Reports, 17 vols. ---- 100
Ill., 19 to 38 & 46, @ 11 ea. ---- 242
Ill., 39 to 45, 7 vols., @ —---- 40
Ill., 47 to 63, 17 vols. ---- 80
462

May 8. Law Institute:
(8) Ill. Reports, 63 vols., less 2–18 & 53 to 63, 46 vols. ---- 355

Apr. 27. N. C. Mook, Albany, N. Y.:
(7) Ill. Rep's, set (1–52) 52 vols. ---- 400

Apr. 22. N. C. Elliott, Danville, Ills.:
1327 (6) Ill. Rep's, 63 vols. (less $10 for vol. 19) ---- 450

Mar. 24. Culver, Page, Hoyne & Co.:
(5) Ill., 33 & 46, @ 10 (for vols. 22 & 26, in trade) ---- 20

Mar. 11. Capt. Sherhmol:
(4) Traded vol. 37 for Adam's & Durham's Stats., worth $12.

Mar. 3. O. P. Chisholm:
(3) Ill., vol. 36 ---- 15

Jan. 30. H. M. Matthews:
(2) Ill. Rep's, 63 vols. (1–63) ---- 450

Jan. 28. Beck & Leonard, Boulder, Colo.:
(1) Ill., 29 & 38, @ $11 ---- 22

And thereupon complainant read in evidence the further deposition of James E. Callahan, as follows:

1328 On the 19th day of July, A. D. 1882, the solicitors of the respective parties being present, the further taking of testimony in said cause before said master is resumed as follows, to wit:

JAMES E. CALLAHAN, a witness recalled on behalf of the —, being first duly sworn, was examined in chief by Mr. COTHRAN, and deposes and says as follows:

Int. 1. Please state your name, age, residence, and occupation.
Ans. ——.

Mr. COTHRAN:

Q. In your former testimony you annexed a table showing the cost of manufacturing, &c., of volumes 32 to 38, Illinois Reports. Have you since then made a calculation of the cost of manufacture of the volumes printed by you so far as composition, paper, and press-work is concerned?
A. Yes.
Q. Please annex that statement to your testimony as an exhibit.
A. I will do so.

(Witness annexes the statement in question as follows (see next page):

1329

	Cost of composition, paper, and press-work.
Vol. 32	11 50
	694 82
33	563 55
34	10
	432 47
35	6
	617 73
36	616 86
37	553 34
38	657 62
	4,136 33

Further testimony in behalf of defendants concerning the damages sustained by the infringement of volumes 32 to 38, inclusive, embraced in original bill.

And thereupon defendants, to further maintain the issues on their part as to the damages sustained by reason of the infringement of volumes 32 to 38, inclusive, of the Illinois Reports embraced in the original bill, read in evidence the following depositions:

The deposition of James E. Callahan as follows:

1330 On the 19th day of October, A. D. 1882, the solicitors of the respective parties being present, the further taking of testimony in said cause, before said master, is resumed as follows, to wit:

JAMES E. CALLAGHAN, a witness on behalf of the defendant-, being first duly sworn, was examined in chief by Mr. HIGH, and deposes and says as follows:

Int. 1. Please state your name, age, residence, and occupation.

Ans. ——.

Q. Have you made an examination of the sales books of Callaghan & Co. with reference to their actual sales of volumes 32 to 38 of Illinois Reports during the years 1876 and 1877 down to the time of the publication of their new edition?

A. Yes.

Q. Look at the statement which I now show you and state if that is the result of the examination.

A. Yes.

Q. Does that show all the sales with the prices and the name of purchasers and number of volumes?

A. Yes, sir; there were other sales of sets from which the volumes in question were deducted.

Q. In which volumes 32 to 38 were not sold?

A. Yes.

Q. This statement includes all the sales of these volumes, 32 to 38?

A. Yes, sir.

Counsel for defendant offers in evidence the statement re-
1331 ferred to, which is marked Ex. 1 to deposition of James Callaghan.

Q. I notice in the statement submitted by you some instances were a gross price is fixed upon sales of Illinois Reports, together with other sets and other books. Was that the fact as to those sales?

A. Yes.

Q. In those instances where the Illinois Reports were sold in connection with other sets of reports or other books, was any discrimination made in the price, or were they simply lumped in at one price?

A. Lumped in as they are now. That is a transcription of the charge in the sales book.

Q. In one or two instances I notice this statement says, "less certain volumes." Explain what that means, as in the sale to G. L. Yeager you have noted "less volume 36, $10."

A. It means that volume was not sold.

Q. You did not have that to deliver at that time?

A. No, sir; that amount was deducted; it is possible it was agreed to furnish it.

Q. But it was not included in the sale?

A. No, sir.

Q. Have you examined the books of Callaghan & Co. for the purpose of ascertaining whether it is possible to discriminate between the expenses paid by the firm on account of advertising and selling volumes 32 to 38 from the time of their publication to the time of the injunction, so as to present those expenses separate from the general expenses of conducting the business?

1332 Objected to as not the proper way to prove the fact.

A. I did make such examination.

Q. What is the result of it?

A. I satisfied myself it was absolutely impossible to arrive at any such conclusion—that is, to find the exact proportion of the expense of doing business that ought to be charged up to the Illinois Reports.

Q. Is there any discrimination or distinction made in the expenses of the firm in reference to these volumes, 32 to 38, from their general expenses?

A. No, sir. There might possibly be a charge of advertising, perhaps, charged up against some particular volume, or a charge of freight, as you will find in a former exhibit a charge of freight on paper, six or seven dollars, but as a rule there was nothing in the expenses going to show what proportion of the expense belonged to these volumes.

Q. Does that Ex. No. 1 which you have produced show all the sales of any of the volumes 32 to 38 during the period in question?

A. All, I think.

Q. State the number of volumes of each *of* report, 32 to 38, sold in the years 1877, 1878, 1879, 1880, and 1881 to the time of the injunction.

A. I am not able to state exactly and can only give an approximate estimate, as follows: In the year 1877, about 50; 1878, about 150; 1879, about 125; 1880, about 100; 1881, about 5; and
1333 this is all based upon the approximate estimate of 430 being sold.

EXHIBIT 1 to Dep. Jas. Callaghan.

Date of sale.	Purchaser.	Residence.	Books purchased.	Price rec'd.
Feb'y 11, '76	J. C. Remick	City	Ill. Rep'ts, 68 vols. " Dig., 2 " Rev. Stat. " " 218	$465 00
" 12	W. J. Knight	Dubuque, Ia.	Ill. Rep'ts, comp. 1 & 68 & 76, 67 vols. Ind. " " 57 " Index to Mo. Rep'ts	700 00
" 18	Kretzinger & Veeder	City	Ill. Rep'ts, 68 vols. U. S. " 88 " Bouvin's Dict., 2 "	900 00
May 4	W. H. O'Brien	City	Ill., complete, 69 vols.	450 00
" 9	G. L. Yeager	City	" Rep'ts, 69 " less vol. 36, @ $10.00	470
July 6	Jno. C. Fitzgerald	Grand Rapids	Ill., vols. 36 & 46	25
Aug. 15	J. E. Jamison	Muskegon, Mich.	Ill., vols. 1 & 69, incl. " " 76 } 10 vols.	415
Sept. 12	W. B. Bradford	City	Ill. Rep'ts, 70 vols.	450
1334				
Oct. 4, '76	O. A. Snideker	Jerseyville, Ill.	Ill., vols. 1 to 69, 76, & 77, less Ill., vols 19, 22, 23, 24, 25, 27, 28, 29, 33, 35, 36, 37—12 vols., 6,000	400 00
Dec. 12, '76	"	"	Ill., vol. 36	5 00
Jan'y 25, '79	A. L. Osborne	City	Ill., 2 to 69, incl., & 75 to 78	390 00
M'ch 29, '79	Jno. Wiley & Son	New York, N. Y.	Ill., 69 vols., 75, 76, 77, 78, less not sold, scarce, vol. 3, Gill. 5, Ill. 11 & 12; in all, 65 vols. sold	375 00

1335 And thereupon defendants read in evidence the deposition of Andrew P. Callahan, as follows:

1336 On the 19th day of October, A. D. 1882, the solicitors of the respective parties being present, the further taking of testimony in said cause before said master is resumed as follows, to wit:

ANDREW P. CALLAHAN, a witness on behalf of the —, being first duly sworn, was examined in chief by Mr. HIGH, and deposes and says as follows:

Int. 1. Please state your name, age, residence, and occupation.

Ans. Andrew P. Callahan.

1337 Q. Are you the same Andrew P. Callaghan who has before testified and who is one of the defendants in this case?

A. I am.

Q. How long have you been engaged in the business of law publishing?

A. 15 years.

Q. Are you familiar with the trade and its usages and customs throughout the country?

A. I think so.

Q. State whether there was any standard market price for volumes 32 to 38, inclusive, of the Illinois Reports, say during the years 1876 and 1877, prior to the publication of your new edition.

A. There was no standard price; I do not understand there is any standard price to any book that is out of print and scarce.

Q. Were these books then out of print?

A. They were.

Q. What would you say as to the actual condition of the market at that time with reference to price?

A. Prices were greatly fluctuating; it depended upon the amount of stock that the book-seller carried or the present demand that he had for the book at that time; it might be up one month and down the next.

Q. From what sources was the trade enabled to procure their stock of these volumes?

A. As they were picked up at second hand from one library or another about the country.

1338 Q. Then, if I understand you, the price of those volumes at that time was largely dependent upon whether the dealer could procure them and upon the necessities of the purchaser?

A. Yes, sir.

Q. What experience has your firm had as publishers of law reports, and name the reports you have published?

A. We have published books constantly for quite a number of years, and would be ranked, probably, among the leading publishers in the country.

Q. Name some of the law reports of which you are the regular publishers.

A. We are publishers of the whole of the Wisconsin Reports, between 30th and 40th Michigan Reports; we own 9 of the Minnesota Reports and publish two of the Nebraska Reports; we publish 9 of the United States Circuit Court Reports for this circuit, 3 for the 5th circuit, 2 for the 6th, and 3 for the 8th; we own the stock of quite a number of other reports, but we do not publish them.

Q. You bought them after publication?

A. Yes, sir.

Q. State, if you know, what is the general usage and custom among law publishers in this country with reference to the stereotyping — law reports, either the original editions or reprinted or new editions.

A. I believe all the publishers now that I am acquainted with stereotype the reports, and some of the houses stereotype even their text books—quite a number of them.

1339 Q. Do you mean they also stereotype new editions or reprints of reports?

A. All that I know of, all the reprints with which I am familiar with, made recently, have been stereotyped.

Q. Can you name some reprints or new editions or new reports of recent years that have been stereotyped?

A. I could only state from my knowledge.

Objected to unless the witness knows.

A. I only know from the statements of the publishers.

Q. Counsel for complainant objects to the witness stating anything that he does not know from his own knowledge.

Q. Do you know from information derived from the publishers in the usual course of business with law publishers?

A. I do.

Q. Go on and state.

Objected to.

A. Banks & Brothers printed several volumes of Kentucky Reports and stereotyped them.

Q. When?

A. About ten years ago F. D. Linn & Co., of Jersey City, published several volumes of New Jersey Reports and stereotyped them; Robert Clark & Co. republished a large number of the Ohio and Ohio State Reports and stereotyped them; Merrill, Field & Co., of Indianapolis, republished several of the Indiana Reports and stereotyped them; West & Co., of St. Paul, reprinted the first eleven volumes of the Minnesota Reports and stereotyped them; Mills

1340 & Co., of Des Moines, reprinted several of the Iowa Reports and stereotyped them; Thomas & Wentworth, of St. Louis, and E. 1. Jones & Co., of the same place, reprinted a large number of the Tennessee Reports and stereotyped them; A. L. Bancroft, of San Francisco, and Sumner & Co., of the same place, reprinted many of the California Reports and stereotyped them; in fact, I

know of no reprint made in the last ten years of reports that has not been stereotyped.

Q. Have the reprints you have just mentioned been made of late years—say within eight or ten years past?

A. All of them within 8 or 10 years past.

Q. What has been the fact as to Mr. Freeman stereotyping his reports?

A. I am informed by Mr. Freeman that they are all stereotyped.

Q. From 46 to the end of the series?

A. From 46 to the end of the series.

Q. State whether or not this stereotyping of law reports is or is not a matter of real economy to the publisher.

Objected to.

A. I think it is or it would not have been done.

Q. Why do you regard it as a matter of economy.

A. Because when the edition is exhausted it saves costs of resetting the type. If it costs $750 to make a volume of stereotyped plates—

1341 that is, to set the type and put it into permanent form in the shape of stereotype plates (objected to), $250 of that 750 would be represented in the cost of stereotyping; the other 500, speaking in round numbers, would be the cost of setting the type; but in case the volume is not stereotyped a larger number of volumes would have to be printed than in the case of stereotyping, in order to supply the demand for the book during the period the publisher thinks it necessary. The interest on the added material, the paper, and the press-work, which goes into this additional stock, made necessary by the fact it is not stereotyped, would be in course of time almost equal to the cost of stereotyped plates, but when in case of its not being stereotyped the edition would be exhausted the publisher would have to submit to the original expense over again of setting the type—$500; that is the reason why I believe all publishers, so far as my knowledge of business extends, have adopted the mode of printing volumes of reports and stereotyping them.

Q. What has been the experience of your house with regard to the necessity or desirability of advertising your reports and reprints of your reports as affecting their sales?

A. Our experience has been that advertising any article helps to sell it, whether it is reports or text books, and we think best to advertise reports.

Q. Has that been your experience with reprints?

1342 A. Yes, sir.

Q. What has been your experience as publishers with regard to the employment of travelling men to sell your reports and new editions?

A. I find the employment of travelling men on the road exceeds the benefit derived from all other sources in the sales of sets of reports.

Q. How does that result, and why?

A. Because of the influence of personal interviews between the buyer and seller.

Q. The testimony in this case heretofore taken shows that from the time of the publication of your new edition of volumes 32 to 38 to the granting of the injunction restraining their sale, you sold, in round numbers, from four to five hundred copies of each of these volumes; would you regard that as a large or small sale for that period of time?

A. That would be a very large sale, under the circumstances, of that set.

Q. After the original edition was out of print and had long been out of the market?

A. Yes, sir.

Q. To what fact do you attribute those large sales during those years?

A. Very largely to the personal efforts made by the firm of Callaghan & Co. in attempting to sell them.

Q. In the way of travelling agents?

1343 A. In the way of advertising and travelling agents.

Q. What did you do with regard to travelling men in reference to the sale of these reports?

A. We directed them to make special effort to sell every set they could. We had made a contract with Freeman, and we decreased the price of the set between one and two hundred dollars in complete sets, and we directed our travelling men to urge their sale with all their might in the States outside of Illinois.

Q. As well as Illinois?

A. As well as in Illinois.

Q. What was the fact as to what they actually did in that direction?

A. A very much larger proportion of the total sales were made during that time outside of the State than were ever made before, and a large proportion of the total sales made by our firm were made outside of the State of Illinois, through the influence of travelling men mainly.

Q. Taking the aggregate of your sales of these volumes during these years, about what proportion, in round numbers, would you say were made by these travelling men?

A. At least three-fourths; I think that would be a low estimate.

Q. Are you able to mention any particular instance of sales being increased by the personal application of travelling men, either yourself or any of the men?

A. The whole tenor of our business men was to have our

1344 travelling men make special efforts in the States outside of Illinois. In my travelling experience—I did not travel, of course, but I made one trip, I think, during that period, from the date of my admission to the firm to the date of the filing of this bill—I made a trip to California, during which I sold eight sets of Illinois Reports in San Francisco. I believe that is a larger number of sets than were owned in the city of San Francisco before.

Q. Calling your attention again to the question of advertising, would you regard the fact of a volume of Illinois Reports being

mentioned in publishers' catalogues as a sufficient advertisement to effect their sale?

A. No, sir; all reports are mentioned in all publishers' catalogues I have seen that pretended to be general catalogues.

Q. Comparing the current edition of reports with reprinted or new editions, isn't it true that it is necessary to advertise a new edition more largely than the original?

A. Certainly. The original edition needs but little advertising. There is a spontaneous demand existing for current volumes, at any rate, of any supreme court within the jurisdiction of that court. With reprints it is especially necessary that they should be brought to the attention of the profession.

Cross-examination by Mr. COTHRAN:

1345 Q. You say that you think a new edition or reprint would require more advertising than an original edition. Why is a new edition or reprint of a book printed; is it to meet a demand, or a mere fancy?

A. In the case of a complete set of reports it is made generally not so much to meet an existing demand as to meet a prospective demand as well as an existing demand.

Q. As to the reprint of 32 to 46 of Illinois Reports, were these printed to meet a demand?

A. I cannot answer that question without making it longer than, perhaps, I should. The reprint of volumes 1 and 19 to 46, inclusive, was made as an entirety for the purpose of completing the sets of Illinois Reports. The demand in the State of Illinois, in our judgment, would not warrant the republication of any single one of those volumes, where the sale would be continued of that volume, and it was only by complete sets of Illinois Reports that the republication would be profitable at all.

Q. That was to meet a demand; for a present or prospective?

A. Both present and prospective, what we expected to be the demand.

Q. You have not answered my question. Why did you undertake the reprint of 32 to 46, including volume 40?

A. We had a large stock of volumes 2 to 18, inclusive, of the Illinois Reports; we had the copyright of the balance up to and
1346 including volume 30; the stock was comparatively dead of volumes 2 to 18; by completing the sets or arranging for the completion of sets we could make the whole thing profitable, or we thought we could.

Q. Did I understand you to say that prior to the time you commenced reprinting these volumes they were very scarce?

A. 32 to 38 were.

Q. To meet that demand in part you reprinted?

A. That was one of the reasons for our reprinting. It was not the sole reason.

Q. When there is a demand for a reprint how happens it it requires more advertising to announce it than the original.

A. For the reason alleged. I do not see why the original edition should require advertising at all within the jurisdiction. It is a matter of necessity for a lawyer who has a set of reports to keep it up—that is, a lawyer in active practice.

Q. The extent of advertising of any kind of business—isn't it regulated very largely by the particular notions, or judgment, or feelings of the individual?

A. I think so.

Q. One man engaged in the same line of business would advertise and another would not?

A. I presume he would exercise his judgment.

Q. There is no rule regulating advertising or the results of advertising?

1347 A. I do not know of any rule that regulates that. I have my own views about it, but I cannot swear to the existence of a rule.

Q. In your judgment, advertising is beneficial?

A. Exactly—decidedly.

Q. How many travelling men have you got now selling your publications and other books?

A. Four.

Q. How many had you prior to the commencement of the reprint of 32 to 38, inclusive?

A. Over three or four; I think four.

Q. How many have you continued right down to the present time?

A. An average of four.

Q. Then the number of your travelling men has not been diminished since the injunction in this case?

A. I think not.

Q. To whom were these eight sets you sold in California sold?

A. They were sold to book-sellers, in addition to which we sold a number of sets to lawyers.

Q. How many sets?

A. I think as many as four more.

Q. When was that?

A. That was in 1878.

Q. At what price did you sell the sets to lawyers?

A. I cannot remember that. I can give you the exact figures if it is necessary. The ruling price at that time for lawyers at retail, I think, was $325.

Q. How many volumes?

A. I think about 80, or somewhere along there. I can't

1348 remember exactly about the full set as it then existed, in March, 1878.

Q. That included your reprints?

A. Yes.

Q. You spoke of the proportion of your sales that were made by travelling men; have you any means of telling what proportion were made by travelling men?

A. Yes; all sales were entered on the sales book and a note made of the source from which the order came.

Q. Have you made any examination with reference to ascertaining what proportions were sold at the store?

A. Not the exact proportion; I can make it if you wish.

Q. You say you sold in the neighborhood of 400 copies of each volume of these reprints; was not that large sale occasioned very largely by the destruction of those volumes by the fire?

A. Not largely; the larger portion were sold in complete sets; the larger portion went into complete sets sold to new parties.

Q. Do you think you sold as high as 400 copies of each of these volumes?

A. Of these reprints?

Q. Yes.

A. I think so; I didn't go over the figures; James Callaghan, one of the witnesses, went over the books and compiled the figures from the books.

Q. The exact figures?

A. Yes.

1349 Q. At the time you commenced the reprinting of the volumes in question about how many copies would have been a reasonable edition to supply the existing and prospective demand for 10 or 15 years?

A. You mean the then existing demand?

Q. The existing and prospective demand.

A. It is difficult to say what the prospective demand would be; a prospective demand is effected by the efforts of the publishers.

Q. When you keep a book you have some idea about what the demand is going to be?

A. I can form an opinion of it.

Q. What, in your opinion, would have been a reasonable edition of these volumes to meet the then existing and prospective demand for the succeeding 10 or 15 years?

A. It is impossible to answer that question; it depends upon what the interest of the house would be in the whole set.

Q. I understood you to say you could give an opinion, and I ask you for it.

A. In whose hands would those books be?

Q. I am asking the question.

A. I will answer it in this way: My opinion of the number necessary to print to supply the demand for 10 or 15 years in the hands of Callaghan & Co. would be different from the number I should think necessary to supply the same demand in the hand of E. B. Myers.

Q. Proceed.

A. I have answered the question.

Q. You are giving a relative idea, but do not give any figures.

1350 A. I ask you to ask me, if you will, the precise question you want answered.

Q. When *do* you commence the reprint of volume 32 and the balance of that series down to 38?

A. I think in February, 1877.

Q. And down to the time of the injunction you sold 3 to 400 copies?

A. Yes; whatever the number is, 4 or 500.

Q. Now, taking those figures into calculation, what would have been a reasonable edition to have printed of those prospective volumes at the time you reprinted them to meet a then existing and prospective demand for the next 10 or 15 years?

A. If I didn't intend to make any special efforts——

Q. Whether you had or not. Assume you were going to make efforts to keep the same four men travelling all the time.

A. My estimate would be larger if I intended to make efforts.

Q. I assume you were going to keep four men on the road; what is your estimate of the edition?

A. I should think at the time we commenced that reprint that a thousand copies would be a large number.

Q. Do you think so now?

A. I should not have thought of printing at all without stereotyping them.

Q. I have not asked you a word about stereotyping.

A. I think so now.

Q. What would have been a reasonable edition, in your judgment, now?

1351 A. My judgment now would be there ought to have been at least 1,500 copies printed.

Q. How many copies can be printed from the same type as it is set up before the type becomes worn?

A. I think there has never been a limit placed to it, because there has never been a large enough edition.

Q. How large an edition is the largest you ever printed of a book at one time?

A. Certainly not to exceed 2,000, I believe.

Q. How large an edition could be printed from type before it would be discovered that the type was worn?

A. I think 100,000 could be printed without materially affecting the character of the work done.

Q. Would not an edition of 1,500 copies, in your judgment, have been an edition large enough to meet the then existing and prospective demand for 10 or 15 years at the time you reprinted those volumes?

A. Yes.

Q. Will you tell me the difference of expense in having printed that edition from type and having printed on stereotyped plates?

A. I can, if you will give me a little leisure to figure it. I think in round numbers there would be a difference in the interest on the cost of the plates and the interest on the cost of the extra stock needed of about $300 during the 15 years in favor of the plates, added to which there would be or ought to be added the cost

1352 of resetting the type where a new edition would become necessary.

Q. What was the expense of stereotyping volume 32, as a specimen?

A. In round numbers I should say about $200, the stereotyping.

Q. What was the expense in paper and press-work on the 1,500 copies printed?

A. We estimate that the printed and folded sheets unbound of a book amount to about fifty cents, and a thousand of those would amount to $500.

Q. Is that the expense of the paper and press-work of a volume of the size of volume 32?

A. About that; that would be it in round numbers.

Q. That would make, according to your estimate, $750?

A. $500 for a thousand copies. My estimate is based on the difference between carrying the plates and carrying the extra stock.

Q. I have not asked you in that form. You say the expense—you mean the composition, paper, and press-work—is fifty cents for an edition of 1,500?

A. Fifty cents representing the paper, press-work, and folding in the unbound sheets.

Q. What is the composition?

A. The composition cannot be put into an individual volume.

Q. Give me the figures of the composition, paper, and press-work for an edition, say, of 1,500 copies of volume 32.

1353 A. Without going into the actual figures I cannot tell how many pages there are in the book. I can only give it to you approximately. In round numbers I should think the cost of composition of that book—it differs to-day and then—to-day it would be about $450 for composition and $200 for stereotyping, making altogether $650.

Q. I have excluded the stereotyping. I ask you for the composition, paper, and press-work.

A. The composition of that volume would be, say, $450, and the paper, press-work, and folding and gathering of sheets would amount to about 50 cts. a volume more, or $750 for the 1,500, making $1,200 altogether without the binding.

Q. When you stereotyped one of these volumes what was the edition you printed?

A. Five hundred; some ran less. I know we did not intend to exceed five hundred in any case.

Q. What was the expense of composition, stereotyping, and printing 500 copies of the same volume?

A. The composition and stereotyping would be $650; 500 copies at 50 cts. would be 250, making $1,000.

Q. In the one case you would have an edition of 1,500 copies at $1,200 and in the other case you would have an edition of 500 copies and stereotyped plates on hand?

A. That is about it.

Q. How frequently do a set of State Reports require to be reprinted to meet the demand?

A. We never have them at all.

Q. Don't you know various sets of State Reports have been reprinted once or twice?

1354 A. Some of them, because when they were originally printed, some years ago, the art of stereotyping was not generally known.

Q. They have been reprinted in several instances.

A. Not in frequent instances, but in quite a large number of instances they have, and I think nearly all of them have been stereotyped when reprinted.

Q. Do you know of a set aside from Vermont that have not been reprinted and some Southern reports.

A. I don't know of any New Hampshire Reports that have been reprinted? *A.* Some in Maine have not been reprinted.

Q. Full sets in Maine are hardly obtained?

A. Not of the original edition.

Q. Don't you- experience as a law-book publisher show you that lawyers want reprinted an annotated edition of State Reports in preference to the other.

A. Where they are in existence they call for them.

Q. That is the reason why they are annotated and printed?

A. When State Reports have been annotated and reprinted the preference is given to them rather than to the old ones without the notes.

Q. How frequently have the leading State Reports of the different States been reprinted?

A. I don't remember of any set of State Reports in existence that has been reprinted more than once.

Q. Do you know Johnson's Chancery Reports?

1355 A. I do.

Q. How many times has that been reprinted?

A. None; I believe there has been three different editions, but one of them is entirely different from the other two; it is a condensed edition printed by another house.

Q. Who reprinted 1 to 18 of the Illinois Reports?

A. Volume 1 was reprinted by a man named Beecher and 2 to 18 was printed by Gilbert, of St. Louis?

Q. Were they stereotyped?

A. They were not.

Q. You bought the edition?

A. We bought the edition.

Q. They are not yet stereotyped, are they?

A. No, sir; they will be when they are reprinted; that was done in 1869, I believe.

Q. Do you remember how large an edition was printed?

A. I was told by Gilbert that he printed 1,000, which was entirely inadequate, because some of them are out of print now.

Q. How long since they have been out of print?

A. Some of them for a year and a half.

Q. In relation to Kentucky, New Jersey, and Ohio, you have spoken of as stereotyped; you do not pretend to have any personal knowledge on the subject?

A. Nothing more than a statement to that effect by the publishers. I have never seen the plates.

Mr. HIGH: In the figures you have given on the cross-examination as to the cost of producing volume 32 I understand you
1356 have not attempted to give the actual cost of your house in 1877, but only an approximate estimate.

A. An approximate of the cost now. The actual cost, I think, is in evidence here.

Q. The present price is considerably lower than in 1877?

A. I think they are lower.

Mr. COTHRAN: The relative prices of composition and stereotyping are the same now as then?

A. About; I think the stereotyping averages about one-fourth to one-third of the whole of the composition and stereotyping.

And thereupon defendants read in evidence certain advertisements published by the complainant, E. B. Myers, in the Chicago Legal News as follows:

1357 Defendants offer in evidence the advertisement of the complainant Myers in the issue of the Chicago Legal News of October 28th, 1871, which reads as follows:

"E. B. Myers, law-book seller and publisher, 1022 Wabash avenue, Chicago, near 23rd street. I have a few sets of Illinois Reports, vols. 2 to 18, inclusive; also a few subsequent volumes were in my Eastern bindery, to arrive in a few days. Vols. 2 to 18 I will sell at $6.00 per volume."

Also an advertisement by the complainant Myers in an issue of the same paper of Dec. 16, 1871, as follows:

"I have a few sets on hand of Scammon Reports, 4 vols.; Gillman's, 5 vols.; vols. 11 to 18, inclusive, at $6.00 per volume; also various volumes up to 46 in good order at reasonable rates. Second-hand volumes of reports and digests wanted, for which liberal prices will be paid.—E. B. Myers."

Also an advertisement of the complainant Myers in the issue of the same paper of Nov. 18, 1876, as follows:

"Illinois Reports, vols. 39 to 69, 75, 76, 77, and 78; 35 volumes in sets, at $4.50 per volume; current volumes, $5.00.—E. B. Myers."

Also an advertisement of the complainant Myers in an issue of the same paper of September 8, 1877, as follows:

"Illinois Reports, reprinted from the originals, now ready for delivery, vols. 37 to 46, inclusive, Illinois Reports. Price of the
1358 ten vols. together, $40 net; single volumes, $5.00 net; vols. 32 to 36 to speedily follow. I am the exclusive owner of the copyright of vols. 32 to 46, inclusive. They are reprinted from the originals word for word.—E. B. Myers."

It is admitted by counsel for complainant that the advertisements in question were published in the Legal News at the respective dates shown, and that the Legal News was then a paper circulating among lawyers in Illinois.

Counsel for complainant objects to the advertisements because they do not relate to the books in controversy.

Defendants rest on the question of damages.

And thereupon complainant read in evidence the deposition of E. B. Myers as follows:

1359 On the 9th day of May, A. D. 1883, the solicitors of the respective parties being present, the further taking of testimony in said cause before said master is resumed as follows, to wit

E. B. MYERS, a witness on behalf of the complainant, being first duly sworn, was examined in chief by Mr. COTHRAN, and deposes and says as follows:

Int. 1. Please state your name, age, residence, and occupation.

Ans. ——.

MR. COTHRAN: In February, 1876, what was the value of a set of Indiana Reports, consisting of 57 volumes and an index to Missouri?

A. $240.

Q. During the same time what was the value of 88 volumes United States Reports and two volumes Bouvier's Dictionary?

A. The value of the U. S. Reports was $350 to $425, in the market; Bouvier's Dictionary, two volumes, $10.

Mr. HIGH: Did you make any sales of these books at that time at those prices?

A. I made them and know of their being made, these being the market prices they were sold at.

Q. Mention some specific sale.

A. I cannot, only in a general way. I remember of figuring on sets at the time and giving those as the figures. I figured on

1360 this identical set that was sold—mentioned here.

Mr. COTHRAN: You mean the set James Callaghan speaks of in the statement he furnished?

A. I figured on the same books.

And thereupon defendants read in evidence the deposition of Sheldon A. Clark as follows:

1361 On the 11th day of May, A. D. 1883, the solicitors of the respective parties being present, the further taking of testimony in said cause before said master is resumed as follows, to wit:

SHELDON A. CLARK, a witness on behalf of the defendant being first duly sworn, was examined in chief by Mr. HIGH, and deposes *as* says as follows:

Int. 1. Please state your name, age, residence, and occupation.

Ans. Sheldon A. Clark.

Q. You are one of the firm of Callaghan & Co., defendants in this case, are you not?

A. I am.

Q. Were you familiar with the market value of a set of United States Supreme Court Reports during the years 1876-'7—say down to the time your new edition of Illinois Reports came out?

A. I was.

Q. What were those sets worth at that time in the market?

A. They were worth from 425 to 450.

Q. State whether after your edition of Illinois Reports, vol. 32 to 38, appeared in 1877, you were engaged in travelling for the defendant during the three or four succeeding years selling law books?

A. I was, more or less, all the time.

Q. While those sets were being sold?

A. Yes, sir.

1362 Q. You may state what you did with reference to pushing set of Illinois Reports in the market, including vols. 32 to 38?

A. When we began the reprint of those reports I made several trips through this State, and the greater portion of my time was given while in the State to the sale of the reprint of the Illinois Reports, those volumes included. When outside of the State I also made a specialty of them, and a large proportion of the sales made outside of the State were made by myself.

Q. What effect did the effort so made in travelling and pushing them have on the sales of those volumes in the years in question?

Objected to as before.

A. I think most of the sales were made by special effort.

Q. Of yourself and the other travelling men?

A. Of myself and the other travelling men; yes, sir.

Q. Would it have been possible, in your judgment, to have sold anything like the number of those volumes that were sold during the period in controversy without the employment of travelling men to push them?

Objected to.

A. It would not.

Q. Do I understand you include the travelling and pushing these reports during the entire period while they were being sold?

1363 A. I did.

Q. You were on the road most of the time during those years?

A. Yes, sir.

Cross-examination by Mr. COTHRAN:

Q. When did you become a member of the firm of Callaghan & Co.?

A. July, 1875.

Q. Did you make the sale of Illinois Reports, United States Reports, and Bouvier's Law Dictionary to Kretzinger & Veeder about February 18, 1876?

A. No, sir; I did not—that is, I think I did not.

Q. Do you know whether that was a sale for a lump sum or whether the Illinois Reports were put in separately?

A. I could not swear positively. I think it was a lump sum.

Signature waived.

(Endorsed:) Filed Feb'y 2, 1884. Wm. H. Bradley, clerk.

1364 *Testimony in Behalf of Complainant as to the Damages Sustained by Reason of the Infringement of Volumes 39 to 46, Inclusive, Embraced in Supplemental Bill.*

An thereupon complainant, to maintain the issues on his part as to the damages sustained by reason of the infringement of volumes 39 to 46, inclusive, of the Illinois Reports embraced in the supplemental bill, read in evidence the following depositions:

The depositions of James E. Callahan, E. S. Hawley, Joseph H. Clement, Eugene B. Myers, cross-examination of Joseph H. Clement, and cross-examination of E. B. Myers, before
1365 John I. Bennett, Esq., master in chancery.

THURSDAY, *March* 20, 1884—10 o'clock a. m.

JAMES E. CALLAGHAN, a witness called on behalf of the complainant, E. B. Myers, being first duly sworn, was examined by Mr. COTHRAN, and testified as follows:

By Mr. COTHRAN:

Q. Please state your name.
A. James E. Callaghan.
Q. Are you a member of the firm of Callaghan & Co.?
A. Yes, sir.
Q. When did you become a member of that firm?
A. In December a year ago.
Q. Were you in the employ of that company prior to that time?
A. Yes, sir.
Q. And commencing at what time?
A. Since August, 1880.
Q. Down to the time you became a member?
A. Yes, sir.
Q. Are you familiar with the books and accounts of that firm?
A. Yes, sir.
Q. Relating to the publication and sale of Illinois Reports, vols. 39 to 46, inclusive?
A. Yes, sir.
1366 Q. Covering what period are you familiar with the books and accounts of that firm?
A. From August, 1880, up to the present time, and within intervals between times.
Q. I hav- reference to the accounts relating to the republication of vols. 39 to 46, Illinois Reports.
A. Yes, sir.
Q. Have you made any examination of the books to ascertain the number of copies of these several volumes that were published by Callaghan & Co. and sold by them?
A. Yes, sir.
Q. Have you prepared a statement showing, according to your understanding of the books, the number published and sold?

A. I have.
Q. Have you got it with you?
A. Yes, sir.
Q. This statement which you have prepared consists of how many sheets?
A. Twenty-five.
Q. Is there any other paper which you have prepared?
A. Yes, sir.
Q. What is it?
A. A summary of the other twenty-five, with the costs to us of these volumes sold added.
Q. The first four columns on this additional sheet you speak of, of what do they consist?
1367 A. The first column, the volume in question; the second, the number of volumes sold; the third, the total receipts for the number sold for each volume, and the fourth the average price per volume for which sold. It is a summary of the other twenty-five sheets.
Q. Do these twenty-five sheets which you have produced contain all the sales of the reprinted volumes of 39 to 46, Illinois Reports?
A. They do, to the best of my knowledge, after a careful examination of the books.
Q. Which books did you examine to make this statement?
A. Our sales books.
Q. None other?
A. None other.
Q. Does the sales book contain any entries of copies that were sold in the store and paid for?
A. Yes, sir.
Q. Does the sales book contain entries of all the copies of these reprinted volumes sold by Callaghan & Co.?
A. I cannot say as to that, sir; probably it does.
Q. Why are you unable to say whether it does or not?
A. Because it is possible that some one would come in there and buy one of these reprinted volumes and pay cash for it, and it was not placed on the sales book, but on a little daily account of
1368 sales, but it is no way probable.
Q. You did keep a daily account of sales?
A. Yes, sir.
Q. What did that book pass into?
A. It didn't pass at all. It remained in the book in which it was originally entered; was not transferred to any other.
A. Did you make any examination of these daily sales books?
A. No, sir; I do not know as we have them.
Q. Then, as I understand you, your examination, as shown in these twenty-five sheets, was confined to the sales books?
A. Yes, sir.
Q. Is that sales book called a shipping book also?
A. No, sir; it is a book in which we enter all the goods that are shipped.

Q. Do you enter any other goods in this book than these that were shipped?

A. No, sir.

Q. Then isn't it in reality a shipping book of sales that were not made for cash in the store?

A. Not necessarily so. A great many cash sales were not recorded in that book.

Q. But it was of books shipped out of the city?

A. Not necessarily so; no, sir.

Q. Please explain in brief the manner in which you made up these twenty-five sheets and what they represent.

1369 A. By an examination of the different sales books used in the period from the time of the reprint of the volumes up to the date we stopped selling them, page by page, and noticing each sale, the price at which sold, and noting it on this paper.

Q. Just state the number of sheets devoted to vol. 39, and so on through the different volumes.

A. The first four sheets are devoted to vol. 39, the next three to 41, the next four to 42, the next four to 43, the next three to 44, the next three to 45, and four to 46.

Q. I notice under the heading of "remarks" indications that some of these volumes were sold with others; will you explain these remarks.

A. Where nothing is said in that column headed "remarks" it means the books *that* were sold at the price stated or were deducted from sets before reprinted at that price and afterwards charged up. Where the sale marked here (indicating) lump bill means sold in sets in connection with other books. Where the sale is marked here "85 vols., $345," means that the set was sold for $345.

Q. Take the case you have just mentioned, the sale of 85 vols. for $345; how was that sum made up as representing 85 volumes?

A. The sales books show it.

Q. What component parts of this $345; how did you figure these books in?

1370 A. I figured from these volumes to vol. 80 to the end of the set at $2.25 per volume and deducted that from the total amount at which the 85 volumes were sold. I divided by 46 and got the average amount for the first 46 volumes.

Q. Is that the way you have taken it in all instances where some of these volumes were sold in connection with sets?

A. Yes, sir.

Q. Who was the proprietor of the volumes above 46?

A. N. L. Freeman.

Q. The reporter?

A. Yes, sir.

Q. How did you come to make the reduction in that way, Mr. Callaghan?

A. Because Freeman's volumes had a fixed price or value; the other volumes had not; I deducted those at a fixed value from the total sum at which the set was sold and obtained the other.

Q. What do you mean by fixed value?

A. Fixed, inasmuch as they all sold at this price, $2.50, $3.25, and cannot be sold for less without losing money.

Q. What was the cost of these volumes?

A. I do not know as I could say at that time positively; I think it was 10 off we got.

Mr. HIGH: 10 off from the figures at which you figured them in?

A. Yes, sir.

Q. You remember the time Callaghan & Co. had con-
1371 tracted with Freeman fixing the value, don't you?

A. I don't know, sir.

Q. How were these volumes sold—as separate volumes or parts of sets—Illinois Reports?

A. Parts of sets or in sets.

Q. Were any of these volumes, as shown by your statement, sold as separate volumes, distinct from the set?

A. Yes, sir; some few of them.

Q. About how many?

A. I cannot say; I didn't examine especially with reference to that and cannot say; very few, though.

Q. Will this idea help you in arriving at the number? The lowest number your statement shows being sold was 267 copies of vol. 43 and the highest number 310 volumes of vol. 46; can't you explain the difference in the sale?

A. No, sir.

Q. When were the sets sold of which these volumes mentioned in your statement were parts?

A. That I cannot tell, Judge.

Q. Were they sold before the books were printed by Callaghan & Co. or afterwards?

A. Many were sold before.

Q. Can't you throw some light upon the subject as to how many?

A. No, sir; although the statist-cs will show pretty nearly; for
instance, about the time the volume was issued you see the
1372 successive pages here (indicating) contain a large number of copies and later on the pages scatter and one at a time.

Q. These scattering ones you did not get the dates of?

A. There are no dates on any of them?

Q. There is nothing on these sheets to indicate whether they were sold in sets before the publication or afterwards, is there?

A. The fact of the way they run here, according to the pages of the sales book, shows that they must have been sold before publication, because immediately on their appearance these pages, being used at the time, were filled up with these volumes to the number of ten or twelve on a page, showing they were deducted from previous sales.

Q. Have you made any statement from the previous sales showing the price at which deducted?

A. These prices here (indicating) show that.

Q. The price on these sheets was the price as appeared on each book stated in the sheet?

A. Yes, sir.

Q. Is there any connection shown here between the entry of the price on the page of the book as shown by this sheet and the original sale of the set?

A. No, sir.

Q. Then this statement furnishes no information of the
1373 price at which the set was originally sold?

A. No, sir.

Q. Or the reduction at which made?

A. Yes, sir; the total which is made shows the price at which deducted on the sales book.

Q. Is there any information furnished by these sheets showing the price at which deducted from the former sales other than any you find upon the page of the book where these volumes were delivered?

A. No, sir.

Q. When was v. 39 put upon the market?

A. I do not remember the exact date. I looked it up and found the time the earliest of these were published and then ran down the sales book from that time to the time we stopped selling.

Q. Cannot you give the date of publication of either of these volumes?

A. No, sir; not exactly.

Q. Can you ascertain from your book the date of the publication of these different volumes?

A. Yes, sir.

(Witness is requested to furnish dates and have the same ready by Monday, March 24, at 10 o'clock.)

Q. Down to what period of time do these sheets show the sale of these volumes?

A. Down to the time we agreed not to sell them. I do
1374 not remember the exact date.

Q. Mr. Callaghan, can you tell the number of copies of these different volumes that Callaghan & Co. printed?

A. No, sir.

Q. Have you any means of furnishing that information?

A. Yes, sir.

By agreement of counsel further taking of testimony in this case is adjourned to Monday, March 24, at 10 o'clock, at which time witness is to have the dates of publication and the number of copies of different volumes printed by Callaghan & Co.

MONDAY, *March* 24, 1884—10 o'clock a. m.

Examination of JAS. E. CALLAGHAN continued by Mr. COTHRAN:

Q. Did the books from which you compiled the data on the sheets you produced contain entries of the sales of sets of Ill. Rep. of which these volumes constituted a part?

A. These books do not contain original entries of sales.

Q. Have the firm of Callaghan & Co. got the books that do contain the entries of these original sales?

A. Yes. sir.

Q. Do any of the books, and, if so, which of them, of the
1375 firm of Callaghan & Co. contain entries of sales of one or more volumes of the books or, in other words, that were sold for cash in the store?

A. Yes, sir.

Q. Then the books do contain entries showing all the sales of copies of these volumes, 39 to 46, inclusive, do they?

A. Yes, sir.

Q. What are the names of the books that contain these original entries?

A. Sales books.

Upon motion of the complainant for the production before the master, at his office, of the respective volumes of original entry referred to by James E. Callaghan it is ruled by the master that further taking of evidence be adjourned until 2 o'clock p. m., this day, and that the defendants produce at that time the first volume used by the witness of the sales books of the company, with such other books and documents in the possession of the defendants as are involved in the entries of said sales book, so far as relates to the volumes of Illinois Reports involved in the entries of said sales book, so far as relates to the volumes of the Illinois Reports involved in this reference; to which ruling of the master the defendants, by their counsel, object and insist upon their right to have the examination
1376 made at their place of business; whereupon it is suggested by the master that the question be submitted to Judge Drummond for his determination and further instruction to the master, the same to be done before further taking of evidence.

The above ruling of the master, being submitted to his honor Judge Drummond, was endorsed by him, and parties again appeared before the master, Tuesday, April 2d, at 10 o'clock.

James L. High, solicitor for the defendant, being necessarily detained, further taking of testimony was adjourned to 2 o'clock.

TUESDAY, *April* 2, 1884—2 o'clock p. m.

E. S. HANLEY, witness called on behalf of the complainant, being first duly sworn, was examined in chief by Mr. COTHRAN, and testified as follows:

By Mr. COTHRAN:

Q. You are an accountant, Mr. Hanley?

A. Yes, sir; but not a professional accountant.

Q. You can take a set of books and make a statement of sales of certain volumes as appears on these books, cannot you?

A. Yes, sir; I think so.

Q. We desire you to make from the books of Callaghan & Co. a statement showing the number of copies of vols. 39 to 46, in-
1377 clusive, of Illinois Reports that are called the reprint by them, which you will find upon certain volumes of their books that will be handed to you. In that statement we want you to state the

price at which sold and the number of copies of each volume in a tabulated form, so as to show the number of volumes sold and the price at which sold.

By the MASTER:

Mr. Hanley, before proceeding to testify in this case as an expert it will be necessary for you to make an examination of the books of the defendants, and, at the suggestion of counsel, the master wishes to give you certain instructions, which will be taken down, and you will be furnished with a copy of them, if desired. In the first place, as to the scope of the examination, you will examine the books with reference to the sales made by defendants of volume- 39 to 46, Illinois Reports, inclusive. It is conceded, I believe, that these sales commenced some time in the early part of 1877, probably in the months February or March, and that the transactions in regard to which you are to investigate would occur since that time and not before. You have nothing to do with the other matters recorded in these books. These are the general books of the
1378 business of the defendants, and it is their desire that the contents of their books otherwise than is necessary in this investigation should not be communicated by you to any one, the complainant or any one else, so you will not take off minutes or in other ways communicate the contents of defendants' books, except so far as is necessarily related to this investigation—that is, the investigation of the books in regard to the sales of these reports since the early part of 1877. In regard to the manner of making the examination you are subpœnead here upon the supposition that you know more about these matters than the master, and therefore, as to the precise manner in which you shall perform your work, it is left entirely to yourself, but it is understood that these books which are now here before master are a part of a series of books, which we may call sales books, numbered in series, commencing with 14, so far as relates to these books which refer to the early part of 1877, and running down to No. 18, I believe, but not including 18. It is conceded that the entries made were original entries; the entries contained in subsequent volumes are not claimed to be such. It is conceded that at the time these early sales
1379 were made, and which were entered in these early books prior to 18, these Illinois Reports had not been published. Mr. Callaghan has testified in this case, and there is an exhibit, which you will probably have as a guide, which will indicate the commencement of your examination. It commences, I have the impression, with v. 18. It is conceded that these entries are not the primary entries, and, in order to run down the ultimate facts, you will have to look back into the prior volumes. As I understand, the entries in these later books are not claimed, all of them, to be original entries; and it may be necessary for you to look back to the primary transactions, and the record of them may be obtained in memorandum books or letters or other papers which are filed with the defendants at their place of business, and while not controling you at all in your method of examination, yet it is sug-

gested that the point of commencement would be to take the memorandum furnished by the witness Callaghan or to refer to the books to which that memorandum refers and then trace back from the entries there found to the primary facts, as above indicated. So far as relates to the place where the examination
1380 shall take place, the order in this case has required and the master has ruled that these books must be produced here in the master's office, and in pursuance of that order and ruling the books are brought here, and in regard to this series of books the sales books may continue to be brought here, and the examination will be continued in the presence of such person or persons as the defendants may desire. In connection with the other books and papers referred to, and which are original entries as to many of these transactions, viz., memorandum books, letters, orders, and the like, which are not entered in any regular book, but filed by the defendants, and which, also, if required, must be brought before the master, I will say that if you find that facilities are given you at their place of business so that you can get along as well or better there in running down and ascertaining the primary facts as to any of these transactions you may do so at the place of the defendants without the enforcement of the rule that they be brought here to the master's office; but if any embarrassment is occasioned in your exami-
1381 nation there you will have to report to the master, when they will also be ordered to be brought to the master's office, but so far as the examination is concerned the master himself is perfectly willing that you should make the examination at the business place of the defendants instead of insisting that they be brought here. When you have made this examination so that you can proceed with your testimony advise the master and the master will inform the counsel when we will proceed with your examination as a witness.

And thereupon, having been instructed as above, the witness proceeded to examine the books of the defendants; and subsequently and on the 10th day of April, 1884, Joseph H. Clements was called in on behalf of complainant to assist the witness, E. S. Hawley, in the examination of the books of defendants, and, after being duly sworn, was given the same instructions by the master as were previously given to the witness, E. S. Hawley; and thereupon, having been so instructed, the witness proceeded to examine the books of defendants; subsequently the defendants came before the master and objected to allowing the witness, J. H. Clements, to further ex-
1382 amine the books of the defendants on the ground that the witness had been formerly in the employ of the complainant and may again be employed by him; that the witness, in the course of the examination of the books, will be liable to become possessed with a knowledge of defendants' business and especially of a knowledge of the names of their customers, which knowledge he will be liable to use to the prejudice of the defendants and their business. It is admitted by the complainant that the witness was formerly in his employ for a short time as a travelling agent for the sale of law books, but the master finds that he is not now in the employ of the

complainant, and that there is no evidence tending to show—and the complainant claims the contrary—that it is complainant's intention to employ him again. The master rules that the facts claimed do not disqualify the witness from acting as an expert in the examination of the defendants' books for the purposes of this reference, and that the witness may proceed with his examination of the defendants' books preparatory to testifying as to the result of his
1383 examination; to which ruling of the master the *the* defendants, by their counsel, except, and inasmuch as the opinion of the court is desired upon the ruling the foregoing statements of the proceedings before the master are hereby certified to be in accordance with the facts; and the master further certifies that, in his opinion, the said ruling is correct and should be obeyed.

JOHN I. BENNETT,
Master in Chancery, &c.

It is recommended by his honor Judge Drummond that the master appoint some one, if the parties can agree as to who shall be appointed, and if they cannot that the witness, Joseph H. Clements, be allowed to go on with the examination. In accordance with agreement of parties, J. H. Clements proceeds with the examination of the books of the defendants under the supervision of the master; and subsequently the solicitor of the complainant applied to the master for an order upon defendants to bring in the volumes of the series of sales books down to the present date. Whereupon counsel for complainant and defendants appeared before the master, and
1384 counsel for the defendants introduced the witness, James E. Callaghan, and examined him preliminarily as follows, to wit:

FRIDAY, *April* 25, 1884—10 o'clock a. m.

JAMES E. CALLAGHAN, recalled by defendants, is examined by Mr. HIGH, and testifies as follows:

By Mr. HIGH:

Q. What have been your duties in connection with the firm of Callaghan & Co. since March, 1881?

A. As cashier I had charge of books there.

Q. Do you remember the fact of a stipulation being entered into by the defendants' firm before Judge Drummond, about the 8th or 9th of March, 1881, by which defendants agreed not to sell vols. 39 or 41 to 46 until the hearing of the cause?

A. I do; yes, sir.

Mr. COTHRAN: I object to his attempting to prove the contents of a matter of record. Let him produce the record.

Q. What was done, if anything, by the defendants immediately after the making of that stipulation concerning these volumes 39 and 41 to 46?

A. Within a very few minutes from the time that word was

brought into the store all copies of these books were taken
1385 from the shelves and any place where they were handy and they were put away where they could not be got at and sold neither by design or through carelessness.

Q. What instructions were given, if any, to the employés about the sales of these volumes?

A. Instructions not to sell any of them; under no circumstances would defendants allow them to do so.

Q. State, if you know of your knowledge, whether any of these volumes 39 to 46, inclusive, have ever been sold by them from that day to this.

A. They have not.

Q. Or given away or sent out in any shape or manner?

A. No, sir; in no way.

Q. You say these volumes were taken off the shelves and put away at that time and have remained in that position ever since?

A. Yes, sir.

Q. When sales of sets of Illinois Reports or parts of sets, including vols. 39 to 46, have been made by defendants since that stipulation, what volumes or whose edition of 39 to 46 has been sold?

A. When sold at all they have either been second-hand copies of our edition or copies of Mr. Myers' edition.

Q. Do you mean that any second-hand copies of your edi-
1386 tion have been sold since that stipulation was made?

A. Yes, sir.

Q. In how many instances?

A. That I cannot tell.

Whereupon the master ruled that the said books should be brought before the master as requested by the complainant, and the said rule was assented to by defendants' counsel.

Further taking of testimony was then adjourned until these later books should be examined.

WEDNESDAY, *May* 21, 1884—10 o'clock a. m.

JAMES E. CALLAGHAN again recalled.

By Mr. COTHRAN:

Q. Mr. Callaghan, I notice entries in the sales book of Callaghan & Co. in many instances where some or all of the volumes in controversy are included in sales, sometimes in connection with other Illinois reports and sometimes also in connection with other law books, and as a part of the entry some or all of these volumes in controversy are marked less so many volumes at the price stated. What does that price stated in the same line with the books reserved mean?

A. It means that these books were deducted at the price given in the bill and shipped off at the time the set was shipped.

1387 Q. Is that so in all cases?

A. Yes, sir; in all cases where these books were sold.

Counsel for complainant here produces copy of entries from the books of Callaghan & Co., made by the experts, Hawley and Clements.

Q. I will call your attention to an entry under date of Dec. 1, 1877, book 16, page 269, of a sale to C. A. Anthony. Just read the entry.

A. Assuming that this is a correct copy of our books, the entry is, "C. A. Anthony, Marysville, Mo., Ill. R., 80 v.; Ill. Dig., 3 v., $340; less v. 39 to 46, $50; v. 74, $2.50; Ill. Dig., 3 v., $18, making $70.50, leaving a charge of $269.50.

Q. I will call your attention to another entry, Sept. 14, 1878 in book 18, page 276. Will you please look at the entry and read it?

A. "C. A. Anthony, Marysville, Mo., Ill. R., v. 43, $6.25."

Q. Is that one of the volumes that are marked "less" in the previous entry you referred to?

A. Yes, sir.

Q. I will call your attention to an entry under date of May 3, 1879, book 20, page 192. What entry do you find there?

A. "C. A. Anthony, Marysville, Mo., v. 41 & 44 Ill. R., $12.50.

Q. Are those parts of the first entry you spoke of?

1388 A. Yes, sir.

Q. I call your attention to an entry made March 28, 1879, in book 19, page 686, of a sale to Mr. Lloyd. Please state what the entry is.

A. "R. H. Lloyd, San Francisco, Cala., Ill. R., 85 v.; Wis. R., 47 v.; Mich. R., 41 v.; N. J. R., 68 v., $818.37; less Scam., v. 2, $7; Ill. R., 40, 41, 44, and other books reducted, amounting to $42, leav- a charge of $776.37."

Q. I call your attention to an entry under date of May 3, 1879, in book 20, page 194. Just read it, please.

A. "R. H. Lloyd, San Francisco, Cala., Ill. R., v. 41 & 44, $14."

Q. Is that part of the sale to Mr. Lloyd that you previously mentioned?

A. Yes, sir.

Q. I call your attention to an entry of Sept. 7, 1878, book 18, page 209, sale to W. Z. McCoy.

A. W. Z. McCoy, Morrison, Ill., Ill. R., part second hand, 83 v., $223; less Ill. R., v. 39 to 46, inc., $45; v. 22 & 36, $10, $55, leaving sale $265.

Q. At what price per volume are 39 to 46, inclusive, deducted there?

A. I do not know without figuring.

Q. Figure it, please.

A. $5.62½ per volume.

Q. I call your attention to an entry under date of May 3,

1389 1879, book 20, page 195. Will you read it?

A. "W. J. McCoy, Morrison, Ill., v. 41 & 44 Ill. R., $15."

Q. Is that part of the previous sale just mentioned?

A. I do not know, sir; but probably it is.

Q. Assuming that is the price at which they are entered sold on May 3, 1879, is greater than that at which deducted at the original entry, is not it?

A. Yes, sir.

Q. Explain, Mr. Callaghan, how it comes that the price at which they are delivered on May 3 is greater than the price at which they are delivered at the time of the sale, Sept. 7, 1878?

A. I couldn't explain it without looking at the charge and knowing the circumstances which surrounded it. There must have been a reason for it, but what that reason is I cannot say now.

Q. I will call your attention to an entry made Feb. 8, 1878, book 16, page 560.

A. "Lyon & Kilpatrick, Owasso, Mich., Ill. R., 81 v., $345; less Ill. R., 32 to 46, inc., $100; 48, 76, 77, $10.50; v. 74, $2.53, making a total deduction of $113 and leaving a charge of $227."

Q. At what price per volume are v. 32 to 46, inclusive, deducted there?

A. $6.66.

Q. I call attention to an entry made May 3, 1879, book 20, page 195.

1390 A. "Lyon & Kilpatrick, Owasso, Mich., Ill. R., v. 41 & 44, $10.00."

Q. How do you explain the discrepancy between the price at which deducted at the time of sale against that received at the time of delivery?

A. I couldn't without looking it up.

Q. There is a difference of $1.66 per volume, apparently?

A. Yes, sir.

Q. Do you find that in the sale to Lyon & Kilpatrick when the deliveries were made of the copies of vols. 39 & 41 to 46, inclusive? Your books show you received $5 per volume.

A. The copy from our book shows that they were charged on our books at $5 per volume.

Q. That charge was made at the time of the delivery of the book?

A. Yes, sir.

Q. Does that represent the amount of money you received for the books?

A. Not necessarily so.

Q. Does that entry at the time of the sale under date of Feb. 8, 1878, represent the price at which they were sold?

A. The original entry represents the price at which the complete set was sold.

Q. Then, Mr. Callaghan, "Less 32 to 46, inclusive," extended at $100 as part of the sale, does that represent the price at which vols. 32 to 46, inclusive, were sold?

A. Not necessarily so.

1391 Q. What does that represent?

A. It represents the value that we placed on them. We were not able to furnish them at the time, and had to deduct them at some price, and for convenience sake we probably fixed on $100 as being an approximate.

Q. Was the whole bill paid for at that time, Feb. 8, 1878?

A. I couldn't tell without looking at the books.

Q. Are you able to tell at what price this deduction of vols. 32 to 46, inclusive, were included in that sale?

A. I could find it the same way that I made up my schedule originally—that is, deducting for Freeman's volumes and then dividing by 46, getting the average price of the first 46 volumes.

Q. Is there any way by which you can tell from your books the amount of money you received at the time of this sale to Lyon & Kilpatrick?

A. Yes, sir.

Q. That is not shown by your sales book?

A. No, sir.

Q. What does this charge of $5 per volume for vols. 39, 41 to 46, inclusive, to which I have called your attention, represent?

A. It represents an amount fixed on these volumes by us for convenience sake to keep our accounts straight.

1392 Q. That $5 was paid, wasn't it, by Messrs. Lyon & Kilpatrick?

A. Not as an individual item for an individual volume. Lyon & Kilpatrick paid the price at which the set was originally sold—$340; then we owed him these volumes.

Q. I will call your attention to an entry made Dec. 16, 1878, book 19, page 88.

A. "John L. Joslyn, Woodstock, Ill., Ill. R. 19, 20, 21, 23, 24, 26, 27, 28, 32, 33, 34, 35, 36, to 46, inclusive, $150; less 39, 40, 41, 44, and 45, deducted at $20, leaving a charge of $130."

Q. What is the average price of the books sold in that sale?

A. It looks as though the average price were $6 per volume.

Q. At what price per volume were vols. 39, 40, 41, 44, & 45 deducted at that sale?

A. The five volumes deducted at $20, and that is the way I should have answered your former questions in that regard.

Q. What does this $20 represent?

A. It represents the amount deducted on our books for vols. 39, 40, 41, 44, and 45 of the Ill. Reports.

Q. Does that $20 represent the price at which these five volumes sold?

A. Not necessarily so.

Q. I will call your attention to an entry under date of Jan. 10, 1880, in book 22, page 172. Please read it.

A. "B. H. Chapman, Vandalia, Ill., Ill. R., 37 to 80, inc.,

1393 except v. 73 & 74, at $4.50, $120; less Ill., 40, $3.50.

Q. What does that "less v. 40, $3.50," represent?

A. It represents the amount to be deducted on our books for v. 40, which we were unable to furnish.

Q. Does it represent the price at which v. 40 was sold?

A. Not necessarily so.

Q. Mr. Callaghan, if the price set opposite the volume in different sales on your books, where they are marked "less," does not represent the price at which the books sold what does it represent?

A. It represents an arbitrary amount that we fixed for convenience sake, to be charged up as books were issued to the account.

Q. Then, as I understand you, the price extended to the books in these sales marked "less" does not represent the actual price at which such books were sold?

A. It does not necessarily represent it, but it may and may not in some instances.

Q. In billing sales, such as I have called your attention to, how are these books that on your books are marked "less" such a volume—how are they entered on the bills?

A. They are billed as a complete set for the amount at which sold, and on the bottom of the bill the words "due on the
1394 above bill, vol. so and so," whatever it happened to be; that was in the majority of cases the way they were billed.

Q. Would you in such cases indicate on the bills to the customers the price at which deducted?

A. No, sir; that is not our general rule.

Q. Have you any way of ascertaining the price at which copies of the volumes in question were included in sales with other books different from the mode you have stated of deducting Freeman's volumes at a certain price and then dividing the price by the remaining volumes?

A. I know of no other way.

Q. Your books do not show any way by which it could be ascertained?

A. No, sir.

Q. Mr. Callaghan, I have called your attention to certain sales where some of the volumes in controversy were included in a sale with others. Would your answer as to whether the prices at which they were marked as deducted at the time of the sale in answer to my question in relation to these cases apply generally to similar sales throughout your books?

A. Yes, sir.

Cross-examination by Mr. HIGH:

Q. In your direct examination you have stated the number
1395 of sales made of volumes in question as shown by your sales books and also stated that possibly some other sales appeared on what you called petty cash books or daily account of sales?

A. Yes, sir.

Q. When you made that statement had you examined these petty cash books so as to be certain whether any appeared on them?

A. No, sir.

Q. Since making that statement have you examined these petty cash books; and, if so, what was the result as to the number appearing on them?

A. When I examined the cash books I did not find any, but the master afterwards looked over them and found one copy, to which he called my attention, which I had overlooked.

Q. Only one?

A. Yes, sir; only one; v. 46, I think; at about $5.

Q. You have stated that the amount deducted from these original sales on account of volumes which you were unable to deliver was an arbitrary sum?

A. Yes, sir.

Q. Is it not true that that amount deducted was frequently deducted on the purchaser insisting on a certain amount being deducted?

A. Yes, sir.

1396 Q. And because of your inability to furnish these volumes, then, you were obliged to do as the purchaser directed in many cases?

A. Yes, sir.

Adjourned to Friday, May 23, 10 o'clock a. m.

FRIDAY, *May* 23, 1884—10 o'clock a. m.

EDWIN S. HAWLEY, being recalled for examination, was examined in chief by Mr. COTHRAN, and testified as follows:

By Mr. COTHRAN:

Q. Mr. Hawley, have you made an examination of any of the sales books of the defendants in relation to the sales of copies of the volumes of Illinois Reports 39 to 46, inclusive?

A. I have.

Q. What volumes of their sales books did you examine?

A. All of 14, 15, 16, 17, and v. 18 from page 485 to the end, 714 and book 19.

Q. Did you make a memoranda of your examination?

A. I did.

Q. Have you them here?

A. I have.

Q. Are these the notes (indicating)?

A. These are the notes. I have reviewed them and believe them to be a correct account of all the volumes 39 to 46.

1397 Q. Do your memoranda contain a correct transcript of the entries in their sales books of all the sales of vols. 39 to 46, inclusive, Illinois Reports?

A. I think it does.

Cross-examination by Mr. HIGH:

Q. What is your present business?

A. Real estate.

Q. How long have you been engaged in it?

A. 15 or 20 years.

Q. Have you ever testified before as an expert accountant?

A. I have, I think.

Q. How often?

A. That I couldn't say; it was in early years.

Q. How long since?

A. I should judge ten years ago.

Q. In how many cases?
A. I cannot remember.
Q. In one?
A. More than that.
Q. In three cases?
A. I should say three or four.
Q. What experience have you had as an accountant?
A. I was book-keeper for eight or ten years.
Q. Up to what time did you continue in that business?
A. I think about eight years.
Q. During what years?
A. Until about '60.
Q. Prior to 1860?
A. Yes, sir.
1398 Q. Since which time you have been engaged in the real estate business?
A. Yes, sir; most of the time.
Q. Have you been engaged in book-keeping since 1860?
A. No, sir; not as a professional book-keeper.
Q. What books did you keep prior to 1860?
A. Mercantile books.
Q. For whom?
A. Salmon & Co., Syracuse, N. Y., and Frankenthal, Chicago.
Q. How old are you?
A. 54.

Redirect examination by Mr. COTHRAN:

Q. Mr. Hawley, does the labor which you have expended upon the Callaghan Co.'s sales books and which appears by the memoranda before you consist entirely of transcript of entries in their books?
A. Yes, sir.
Q. Entirely?
A. Yes, sir; relating to these volumes. There are some entries in their sales books that I didn't take off, as a whole, in the charge—I mean to say the individual charge—and a great many books that didn't embrace these particular volumes I didn't notice.
Q. I mean the entries which did contain some or all of the volumes in controversy.
A. Yes, sir.
Q. And you copied them correctly?
1399 A. I think I did; yes, sir.
Q. These memoranda of yours indicate the volume of Callaghan & Co.'s sales books from which the entries were taken?
A. Yes, sir.

Before Bennett, May 23, 1884.

JOSEPH H. CLEMENTS is called in behalf of the complainant, and is examined in chief by Mr. COTHRAN, — testifies as follows:

By Mr. COTHRAN:

Q. Mr. Clements, have you made an examination of some of the sales books of the defendants in relation to sales of copies of vols. 39 to 46, inclusive, Illinois Reports, and also in relation to the number printed by them?

A. Yes, sir.

Q. Which of their sales books did you examine?

A. The first of v. 18 to page 485, and vols. 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, & 37.

Q. The first part of v. 18 and 20 to 37, inclusive?

A. Yes, sir.

Q. Did you make transcripts of entries in these various books which related to sales of some or all of the books in controversy?

A. Yes, sir.

Q. Did you make correct transcripts of the entries in these books?

A. I believe they are correct.

Q. Are these the memoranda that you made (referring to copies)?

1400 A. Yes, sir.

Q. Did you examine any book or books in relation to the number of these volumes printed?

A. Yes, sir.

Q. What was that book called?

A. The manufacturing book.

Q. Have you compiled a tabulated statement of the number of copies of these various volumes that were sold, &c., from the memoranda made from their sales books by you and the witness Hanley?

A. I have.

Q. State how you have compiled it, together with what it represents, commencing with the first column.

A. The first column of the statement represents the number of the volume; the next the number of volumes sold separate from other books than the average price of those sold separately; the next the total receipts from those sold separately; the next represents the number sold in connection with other books; then the total number sold as appears on C. & Co.'s books; next the total receipts of average price, $\$4.58\frac{8}{10}$ per volume; next the number printed as shown by Callaghan's books; and next the number on hand.

Q. In relation to this you have marked on your tabulated statement "sold in connection with other books." Is there any way by which you can tell from the entries in the books the price at

1401 which these particular volumes were included in this sale?

A. No, sir; there is no way that I know of.

Q. Did you examine, with one of the defendants, the number of books bound and unbound, which they still have on hand of these reprints?

A. I did.
Q. Did you count them?
A. Yes, sir.
Q. And does your statement show correctly the number on hand?
A. Yes, sir; the number I could find—that were shown to me.
Q. At what place did you examine?
A. I found the bound volumes of 39 to 46, inclusive, except v. 40, at their general place of business, 114 Monroe St., and the others I found on E. Randolph St.; I do not know the number; Bounswick & Co., billiard warehouse.
Q. Did James E. Callaghan accompany you and assist in the counting?
A. He did.
Q. What did you call on him for?
A. All the sheets and bound volumes that he had on hand from 39 to 46, inclusive.
Q. And such as he showed you you counted?
A. Yes, sir.
Q. Did he say anything to you as to there being all there?
A. He said that was all they had on hand.
Q. And your statement you produce here contains an ac-
1402 count as to those that he showed you?
A. Yes, sir.
Q. Where were the bound volumes 39 and 41 to 46, inclusive, that you found?
A. They were at the general place of business.
Q. Were they on the shelves the same as other books and for sale, apparently?
A. They were right out on the counter and on the shelves.
Q. Have you made up this table accurately?
A. Yes, sir; to the best knowledge I have.
Q. And the figures on that are correct?
A. Yes, sir; they are correct.
Q. Do you, in this statement you have prepared, include the volume that was found by the master in the cash books?
A. Yes, sir.
Q. Is this volume that I now call your attention to the same as James E. Callaghan testified to day before yesterday?
A. I believe it is.
Q. What is the number of that volume?
A. 46.

Mr. COTHRAN: I offer this statement prepared by the witness, J. H. Clements, in evidence, marked as Ex. A, Comp't, J. I. B.

Cross-examination by Mr. HIGH:

Q. In the second column of this statement you purport to give the number of copies sold separately from other books. How did you arrive at that?

1403 A. By going over the transcript and finding whether they were sold separately without regard to any books whatever, except these volumes 39 to 46.

Q. You next give the average price per volume at $4.58\frac{8}{10}$. How do you reach that average?

A. I found out what the receipts were for all of these volumes and divided the receipts by the number of volumes; 394, I think there is.

Mr. COTHRAN: 394 volumes?

A. Yes, sir; $1,807.90, total receipts for 394 volumes.

Q. Of which number?

A. Separate number of volumes—that is, sold separately.

Q. In your column headed "total receipts for separate volumes sold," state how you arrived at those figures.

A. I multiplied the number of volumes by $4.58\frac{8}{10}$.

Q. In the one headed "number sold in connection with other books," how did you arrive at those figures?

A. I looked over the books and found out all that were sold in connection with other books.

Q. In the next, under the head of "total number sold as appears in C. & Co.'s books," how did you arrive at those numbers?

A. I added the number sold separately to the number sold in conjunction with other sets.

1404 Q. In the next column, headed "total receipts at $4.58\frac{8}{10}$," how did you arrive at the figures in that column?

A. I multiplied the number by $4.58\frac{8}{10}$.

Q. The number of copies sold?

A. Yes; at the average price per volume.

Q. Where did you get the figures in the next column, headed "number printed?"

A. I looked over the manufacturing book of Callaghan & Co.

Q. And the next, "number on hand," how did you find that?

A. That is the number I counted at the store-room and their place of business on Monroe St.

Q. You have no personal knowledge of the correctness of Mr. Hawley's sheets on which you partly based your estimate?

A. I cannot say that I have.

Q. You simply assume that the sheets which he produced to you, purporting to be copies, were correct?

A. Yes, sir.

Q. And then you took up the work on the point where he left it?

A. Yes, sir.

Q. Under the column headed "total number sold as appears on C. & Co.'s books" you got the aggregate of all the copies sold from 39 to 46 at 2,511, and under the column headed "number on hand" the aggregate of all copies on hand, 1,562?

A. Yes, sir.

1405 Q. Will you state how many that makes in all, as you computed it, of those sold and those on hand?

A. 4,073.

Q. Under the column of your examination headed "number printed" you got the aggregate of all the copies printed as 3,822?

A. Yes, sir.

Q. Does not your exhibit, then, show that there were more copies of volumes 39 to 46 sold by Callaghan & Co. than were printed by them?

A. My exhibit shows that there were more sales I took off the books than the number of volumes I found printed on their memoranda book.

Q. How many more?

A. 251.

Q. How do you explain that discrepancy in your figures?

A. I don't see as there are any discrepancies in my figures. I merely took all of the volumes, 39 to 46, inclusive, on their books, and it shows, of course, by their figures more than the book shows were printed.

Q. Is that the only explanation you have for it?

A. Yes, sir.

Q. You say that you got the average price per volume of those sold separate from other books at $4.58\frac{8}{10}$; and also in
1406 your column headed "total receipts" at $4.58\frac{8}{10}$ you use the same average in the column including those sold with other books as well as those sold separately?

A. Because so many were sold with other books, and the way I found the sales on the books I couldn't get at the price for these volumes 39 to 46.

Q. Were you instructed by counsel for complainant to prepare that column in that way?

A. I was.

Q. And you simply followed his instructions on that point?

A. Yes, sir; on that one point.

Q. In the same column, headed "total receipts at $4.58\frac{8}{10}$," you give the total receipts on v. 39 as $1,536.98?

A. Yes, sir.

Q. Of v. 40, $229.40, and so on to the foot of the column, where you give the aggregate total receipts of all the copies from 39 to 46 sold by defendants as $11,520.45. Does that aggregate represent the amount shown on the books as actually received by the defendants for these volumes, or is not your arbitrary estimate on the basis of $4.58\frac{8}{10}$ as the average selling price?

A. On the basis of $4.58\frac{8}{10}$.

Q. So it is no representative of the actual amount shown
1407 by the books for which these volumes sold? That is based on your average, is it not?

A. That aggregate price represents what they were sold at; the total number of volumes at $4.58\frac{8}{10}$ per volume.

Q. But in giving this $11,520.45 as aggregate receipts you simply took the number of copies found sold and multiplied that by the average, $4.58\frac{8}{10}$, which you were instructed to do by complainant's counsel.

A. Yes, sir.

Q. Your exhibit shows 450 copies of v. 40, as printed by the defendants, and 50 copies of v. 40, as sold by them, and 446 on hand. Is that correct?

A. Yes, sir; that is right.

Q. How do you explain the fact that your exhibit shows a much larger number of copies of v. 40 sold than the difference between those printed and those on hand?

A. The 50 volumes of v. 40 were sold, as their sales books show.

Q. Is that the only explanation you can give?

A. Yes, sir.

Q. In giving the number of copies sold of any of these volumes, as shown by Mr. Hawley's sheets and by your examination of the books, did you attempt to discriminate in any way between those that were new and those sold at second-hand?

A. No, sir; I didn't; I took them all.

1408 Q. Your exhibit, then, shows all the sales, including the new copies and the second-hand?

A. It includes all except those sold at second hand prior to September 13, 1878.

Q. Why did you fix that date as a dividing line?

A. Because that seems to have been the date when the first volume of 39 to 46 was first published; I might add except where the second set is filled in with new ones.

Q. Then, if I understand you, you do not discriminate between the sales of the new copies of any of these volumes and sales of second-hand copies, either of the defendants' edition at second-hand or the original edition of Mr. Myers at second-hand?

A. There was no way of finding out by the books which were original and which were defendants' publications.

Q. Of second-hand?

A. No, sir.

Q. And you made no effort at discrimination?

A. I did; as far as the books were concerned, there were no marks made on the face and no notes made of whose edition it was.

Q. Did you not find entries on these sales books in some cases showing sales at second hand?

1409 A. Yes, sir.

Q. But you pursued that investigation no further to determine as to this, did you?

A. There is no way I could very well, except by the books.

Q. You made no inquiries of the defendants on that point?

A. No, sir.

Q. You have had some experience as salesman of law books?

A. Yes, sir.

Q. In this State and elsewhere?

A. Yes, sir.

Q. In your experience as salesman of law books and law reports, didn't the sales of volumes separate from sets usually bring higher prices in the market than where they were sold in sets?

A. They did where sold entirely separate.

Q. Would your average of $4.58 8/10, then, be a fair average as to these volumes which were sold separate from sets?

A. To the best of my knowledge, I think it would be a low figure.

Q. Did you ever testify before as an expert accountant?

A. No, sir; I have not.

Q. Do you consider yourself an expert accountant?

A. I do, as far as this kind of work goes.

Q. What experience have you had as an accountant?

A. I have had considerable.

1410 Q. What?

A. The last I worked at was accountant for H. M. Kinsley, and before that Miss. Log Co.

Q. You were employed as book-keeper and accountant?

A. Not as professional book-keeper.

Q. Have you ever been engaged as professional book-keeper?

A. I have not.

Q. Mr. Kinsley keeps a resturant in this city?

A. Yes, sir.

Q. You say that you have had no experience as book-keeper and accountant?

A. Not as professional book-keeper; no, sir.

Q. In what business are you now engaged?

A. None except this. I have been at this since I left Kinsley's.

Q. How old are you?

A. 28 next November.

MAY 23, 1884.

EUGENE B. MYERS, complainant in this case, being first duly sworn, was examined in chief by Mr. COTHRAN, and testifies as follows:

By Mr. COTHRAN:

Q. Mr. Myers, are you complainant in this case?

A. Yes, sir.

Q. Do you reside in the city of Chicago?

A. Yes, sir.

1411 Q. What is your business?

A. Law-book selling and publishing.

Q. How long have you been in that business?

A. About twenty-eight years.

Q. You are the owner of 39 to 46 Illinois Reports?

A. I am.

Q. When they were printed were they stereotyped?

A. Yes, sir.

Q. Have they ever been out of print since printed?

A. None except v. 46; the plates of that volume were destroyed in the fire of 1871, but I reproduced them in 1874 or 1875, I do not remember exactly; since that time they have all been in print and in market.

Q. Do you know the market value of the Illinois Reports?

A. I think I do.

Q. What was the market value of 39 to 46 at the time defendants' volumes came into market?

A. The price prior to that time was $6 per volume, although I think we sold some in sets for $5 per volume. At the time they announced the republication of the reprint I reduced mine to $4.50 and $4 in sets for a short time, and then advanced them to the former price, $5 in sets and $6 for odd volumes, except v. 46;

1412 that volume sold at $7.50, and sometimes $6 to the trade.

Q. How long a time were they reduced in consequence of defendants' announcement of their publication?

A. My recollection is about a year or less.

Q. Can you tell what year that was?

A. It was in the fall of 1878, or prior to January, 1879.

Cross-examination by Mr. HIGH:

Q. What was the lowest price, then, at which you sold any of these volumes, 39 to 46, during the period in question?

A. Since the publication of their volumes?

Q. Yes; or since they announced their publication.

A. I think some were sold after their announcement at $3.50 per volume in sets, and from that up to $5; single volumes at $6.

Q. In complete sets of the whole series?

A. In complete sets of 39 to 46.

Q. To whom did you sell them as low as $3.50 at that time?

A. I am unable to tell you to whom I sold them, but to the profession. I sold some to Callaghan & Co. prior to the issue of their volumes.

Q. At what price?

A. They forced me into selling them——

Q. I beg your pardon; I asked at what price.

A. I think at $3.25 a volume.

1413 Q. How many?

A. I think 12 sets.

Q. When?

A. In the spring of '77. They sold me some of their volumes, or volumes which they control-ed and I couldn't get elsewere. They represented that they had a contract with Freeman by which he couldn't sell volumes to the trade, and I could only obtain them from them, and they wouldn't let me have any of their volumes unless I would let them have mine, and that was the price at which they agreed to let me have their volumes or volumes which they control-ed under the contract with Freeman; that arrangement lasted about thirty days and then I stopped it.

Q. Have you stated all you desire to say about that arrangement?

A. I have, unless you would like to hear more of an explanation.

Q. You have spoken of the market value of these volumes as being $6 when sold separately, and in sets at $5. What do you mean by market value—what you got for them in actual sales at that time?

A. Yes, sir.

Q. Did you not represent to the profession and trade, by advertisement or otherwise, after the great fire of '71, that these
1414 volumes were out of print?

A. I do not remember.

Q. You will not swear that you did not so represent to them?

A. I think that I advertised that some volumes the prints were destroyed by fire. I think you will find the advertisement in the Legal News. Very likely you will find several advertisements.

Q. And you advertised that you would purchase them at second hand?

A. Some of them. The advertisements covered 32 to 46, inclusive.

Q. You did not discriminate in these advertisements as to which ones were destroyed?

A. I don't remember.

Q. The advertisements covered from 32 to 46, did they not?

A. The advertisement will show, I suppose.

Q. That is your best recollection now, is it not?

A. I wouldn't say whether it did or did not.

Q. At what price were the remaining volumes in the series of Illinois Reports after 46 being sold in the market at the time the defendants announced their reprints in 1877, and at what price have they been sold since?

Mr. COTHRAN: I object to the question on the ground that it is not legitimate cross-examination. I have asked nothing in relation to any other books except 39 to 46. I simply asked what the
1415 market value of these books were at that time.

By the MASTER: The witness may answer for the purpose of testing witness' judgment as to the value of the books. This is allowed, not as a matter of right, but the master can see no objection to allowing this latitude in this examination.

A. Do you mean the prices of 47 to the end?

Q. Yes.

A. The price of volumes subsequent to 46, in the winter of 1876 and 1877, was $5 per volume. Subsequent to the announcement of the republication of Illinois Reports by the defendants, and some legisislation pending at the time, the reporter who owned these volumes reduced the price for some reason, which, of course, I am unable to tell, in connection with some trade he had with the defendants, and, I think, they were sold at $3.50 per volume during the summer.

Q. The summer of 1877?

A. Yes, sir.

Q. At what price were they sold after that?

A. I think they sold at the same price until the bill was passed by the Legislature paying the reporter a salary. That same bill was pending at the time I reduced the price. It was successful, and the price of 73 and 74, which had been published at that time,
1416 and all the volumes after 80 were sold at $2.25.

Q. And they have been ever since, have they not?

A. As far as I know, they have.

Q. I understand that from that time all the volumes after 47, except 73 and 74, have been sold at $2.25 per volume, so far as you know?

A. No; at $3.50 per volume.

Q. Numbers 47 to 80, exclusive of 73 and 74, have ever since been sold at $3.50?

A. Yes, sir.

Q. Are not these remaining volumes after 46 in the series of the same size and style and substantially the same amount of matter and substantially the same cost as the preceeding volumes?

A. Substantially; yes, sir; but if I were the owner I would not regard it as the same cost, for the reason that the bill was passed giving the reporter a salary of $6,000 a year.

Q. I spoke of the mechanical cost of manufacturing.

A. Substantially the same; yes, sir.

It is stipulated that so much of the defendants' books as is referred to in the memoranda by the witnesses, Hawley and Clements, also the sheets furnished by James E. Callaghan, are before the master for the purpose of reference.

Complainant rests his case.

1417 THURSDAY, *May* 29, 1884—2 o'clock p. m.

Cross-examination of JOSEPH H. CLEMENTS continued by Mr. HIGH:

Q. Mr. Clement, in your tabular statement marked Ex. A, which you produced on your prior examination, have you included all of the copies of vols. 39 to 46 shown to have been sold in the sheets copied by Mr. Hawley and by yourself from the defendants' sales books?

A. No; not all of them.

Q. What, if any, have you excluded from the exhibit?

A. I believe a few sets prior to September 13, 1878.

Q. How many sets prior to September 13, 1878, did you exclude, if you recollect?

A. I do not just remember now. I could tell by looking over it.

Q. Just refresh your recollection in any way you think proper.

A. (Referring to copy.) I think six sets, as near as I can make it. There are six on that transcript.

Q. Six sets of vols. 39 to 46 prior to September 13, 1878, that you did not include in your exhibit?

A. Yes, sir.

Q. Do these appear to have been new or second hand?

A. I believe some were second hand.

Q. And some were new?

1418 A. Yes, sir; some were new.

Q. Do you include in your aggregate of the number sold, as shown in your statement, Ex. A, all other copies of vols. 39 to 46 appearing by these sheets taken from the sales books to have been sold prior to September, 1878?

A. I think they were all made "less"—deducted out of sets sold except these.

Q. Do you mean that you did not find——

A. I didn't put down any at all. I didn't include any that were sold outright before this date, but where they were deducted I took it for granted that they were filled in later on.

Q. What did you do in this case (indicating), where they were deducted out prior to September 13, 1878?

A. I didn't do anything about it until I found it filled in later on.

Q. And you then included them?

A. Yes, sir.

Q. After the date September 13, 1878, in the record of these sales, do you include in your aggregate all sales as shown by your Ex. A—all sales of copies of vols. 39 to 46?

A. Yes, sir.

Q. So that you took September 13, 1878, as the starting point of the defendants' publications—39 to 46?

A. Yes, sir; I believe I did.

1419 Q. Now, how late do you bring down the record of these sales as you have embodied it in your Ex. A taken from these sheets?

A. I believe the latest was April, 1884, the present year.

Q. Do you mean to be understood, then, that your statement, Ex. A, includes all copies of vols. 39 to 46 sold by defendants of any edition between September 13, 1878, and April, 1884?

A. Yes, sir.

Q. And that aggregate you give as 2,511 copies in your exhibit, do you not?

A. 2,511 copies; yes, sir.

Q. Do you include in that 2,511 copies any copies — their vols. from 39 to 46 sold prior to September 13, 1878?

A. I do not believe that I included any at all that were sold prior to that. The sets were sold prior to that, but these volumes were deducted out.

Q. How was it where you found less than sets, say one, two, or three, between vols. 39 to 46 and sold prior to September 13, 1878?

A. I do not believe there was any transcript taken down where one or two volumes were sold before that date.

Q. You only found six sets, and those were deducted out; so you didn't use them?

A. No; these six sets were sold and furnished them.

Q. Did you include these six sets in your exhibit?

A. No, sir.

1420 Q. You excluded them?

A. Yes, sir; they are not in.

Q. If there were any such transcript of part of sets between 39 and 46 included in these sets as sold prior to September 13, 1878, have you included them in your Ex. A? I do not mean in complete sets but parts of sets.

A. No, sir; I don't think I did.

Q. Are you positive upon that point?

A. They might have been sold, but I didn't fill them in in taking off the number sold.

Q. You are not prepared now to deny that you have included these in your statement, are you?

A. To the best of my knowledge, I do not think I included a single one of them.

THURSDAY, *May* 29, 1884—2.30 o'clock p. m.

Cross-examination of E. B. MYERS continued by Mr. HIGH:

Q. You testified at the last hearing as to the market value of vols. 39 to 46 before the defendants announced their reprint. Do I understand that the market value which you then testified to was the price at which you were selling them during the year 1876 and part of 1877?

A. No; they were sold very much higher in 1876.

1421 Q. At what rate were you selling them during that year?

A. From $5 to $10 per volume.

Q. During the whole of 1876.

A. I think during the whole of 1876. I think really down to about the time that Callaghan and Freeman, the reporter, made the trade.

Q. And that arrangement between Callaghan and Freeman was made in 1877, in February, as near as *I* can recollect?

A. That is my recollection.

Adjourned to *Monday*, June 14, at 10 o'clock.

SATURDAY, *June* 14*th*—10 o'clock.

In pursuance of notice to the defendants the complainant, with his solicitor, appeared before the master, and, the defendants failing to appear, complainant moved to proceed *ex parte* in the absence of defendants; whereupon the master postponed further taking of evidence until Monday morning, June 16, at 10 o'clock a. m., at which time he will pass upon this application.

MONDAY, *June* 16*th*—10 o'clock a. m.

In pursuance of adjournment parties appeared before the master, and the taking of evidence was then postponed until Tuesday, June 17th, 1884, at 10 o'clock.

TUESDAY, *June* 17*th*, 1884—10 o'clock a. m.

1422 Testimony in behalf of defendants as to the damages sustained by the infringement of volumes 39 to 46, inclusive, embraced in the supplemental bill.

And thereupon defendants, to maintain the issues on their part as to the damages sustained by the infringement of volumes 39 to 46, inclusive, of the Illinois Reports, embraced in the supplemental bill of complaint, offered the following evidence:

1423 In pursuance of adjournment parties appeared before the master, when the following evidence was introduced on behalf of defendants by Mr. High:

Mr. HIGH: I offer in evidence the summary of the number of volumes sold, cost, receipts, and other details made by the witness, James E. Callaghan, identified and described by him in his examination by counsel for complainant, the same being marked Defendants' Exhibit 1 to James E. Callaghan's evidence, and hereinafter set forth.

Mr. COTHRAN: We object to the evidence, as the larger part of it has not been proven at all. We only interrogated as to two or three of the columes.

And thereupon defendants read in evidence the deposition of Thomas H. Flood as follows:

THOMAS H. FLOOD, a witness called on behalf of the defendants, being sworn, was examined in chief by Mr. HIGH, and testified as follows:

Q. State your name in full.
A. Thomas H. Flood.
Q. Do you reside in Chicago?
A. Yes, sir.
Q. What relation do you sustain to the firm of Callaghan & Co., and how long have you been connected with the firm?
A. I am now a member of the firm, and have been for years—three years.
Q. Before that time what connection did you have with the firm, and during what period?

1424 A. Some years prior to that I was connected with it as a clerk, looking after the manufacturing department, largely.

Q. You were constantly in and about the store and connected with the business?
A. Yes, sir.
Q. Do you remember the fact of the stipulation that was entered into by defendants not to sell vols. 39 to 46, about the 9th day of March, 1881?
A. Yes, sir.
Q. What disposition, if any, was made by the defendants of these vols. 39 to 46, excluding v. 40, immediately after that stipulation?
A. My recollection is that at that time the volumes were taken from the shelves and put in bins and shortly afterwards boxed.
Q. What was done with the boxes?
A. They were nailed up and stored away in our basement.
Q. What is the fact as to whether any of these were sold or given away or taken out of the store in any way from that time on?
A. None that I know of. We gave positive instructions at that time to all the clerks. All concerned understood very well that none of these volumes were to be moved.

Q. How long did they remain in that condition, stored
1425 away, and when were they brought up into the store again?

A. To the best of my recollection, they were not changed or moved in any way until we moved our quarters from Clark to Monroe street.

Q. These you moved with the rest of your stock?

A. Yes, sir.

Q. Still keeping them boxed up?

A. Yes, sir.

Q. How long did they remain in that condition?

A. They remained there until some few weeks ago, when there was an order from the court here to have them counted.

Q. Who counted them?

A. This Clements.

Q. He is the same Clements who has testified in this case?

A. Yes, sir.

Q. What was done with reference to counting them—I mean as to bringing them upstairs or anything of that kind?

A. The boxes were put on the elevater and brought upstairs and unpacked in my presence and put on the ledge there, each number of volumes by themselves. They were packed again after the counting.

Q. Were they immediately repacked and stored away again?

A. Yes, sir.

Q. Did you hear Mr. Clements' testimony on that part, as to the books being exposed on the shelves as if offered for sale?

1426 A. No, sir.

Q. He has stated, in substance, that he found them as if ready or offered for sale; is it a fact they were not placed on the shelves?

A. They were on the ledge, placed there for a matter of convenience. They were brought there from the basement, were taken from these boxes, and put on the ledge, each volume by themselves, as I say—not on the shelves, but on the ledge—and were brought up immediately prior to his coming into the store.

Q. That same day?

A. Yes, sir; not five minutes before.

Q. Were they packed up again?

A. Yes, sir.

Q. Were they offered for sale after the stipulation?

A. No, sir. This relates, of course, to the bound volumes, Mr. High.

Q. I will ask you where the sheets were.

A. In the store-room all the time.

Q. Were any of these sold or offered for sale after the stipulation?

A. No, sir.

Q. Simply stored with the other unbound sheets?

A. Yes, sir.

Q. As to v. 40, tell what was done with that after printed; what has been its condition since?

A. I found 40 printed when I came here first.

1427 Q. In what condition?

A. To the best of my recollection, some 100 copies bound and stored away in the bin that had been printed prior to my coming in.

Q. Have any of those been sold since that time or given away?

A. Not since I came here; no, sir.

Q. How many of the edition of v. 40 that was printed have been disposed of in any way—given away or otherwise—if you know?

A. I have not refreshed my recollection on that; the record shows four copies, I believe.

Q. Where are those four copies, if you know; who has them?

A. I am not quite positive as to that—whether four or six; I presume that two of those copies must be—this is something I hav'n't looked up. You had one of them.

Q. Given me when the bill was filed, as to v. 40, to examine with reference that; is not that a fact?

A. Yes, sir; there was another volume, which was taken by Mr. Cole, then in the employ of Callaghan & Co., as book-keeper, for the purpose of measuring the type, so as to give an order. He took a copy of all that were published at the time, and, as a rule,
1428 measured at the time. A copie got into the hands of one of the editors, Mr. Ewell, and it is possible that two copies were sent to Washington for copyright purposes. I am not positive as to that.

Q. That has been your usual practice, always to send two copies of your books?

A. Yes, sir.

Q. State, if you know, whether Mr. Myers has one copy of that v. 40.

A. I was told he had a copy of it, but I do not know of my own personal knowledge.

Q. Where did you get the copies of v. 40 which have been sold since this stipulation was entered into and which are shown in the exhibit of the witness Clement to have been sold; from what source?

A. They have been purchased, many of them, from Mr. Myers indirectly.

Q. They were of Mr. Myers' edition, were they not?

A. Yes, sir; all of them.

Q. What is the fact as to whether since this stipulation you have purchased, directly or indirectly, any copies of Mr. Myers' edition of the other volumes, 39 and 41 to 46, inclusive, and have resold those to your customers?

A. Yes, sir; quite a few.

Q. What do you mean by quite a few?

A. Quite a number; perhaps I had better say I couldn't say just how many. We have purchased them in a general way,
1429 upon demand, as many as eight and ten at a time—purchased them for the purpose of filling up the set; other times, perhaps, we would send and get one or two volumes, and two or three at other times.

Q. Were these purchases directly from him or sometimes through other parties?

A. Through others in every case.

Q. Did Mr. Myers decline to sell you these volumes?

A. I could not say that Mr. Myers had ever declined to sell them to me personally, but there has not been a very friendly relation existing between the two firms since I have been connected with the house. From that time to this there has been no account between the two houses.

Q. The ordinary trade relations between houses have not existed between the two?

—. Whatever has been done Mr. Myors has got our books through other parties, and we have done the same way.

Q. Have you been actively engaged in selling in the store since connected with it?

A. Yes, sir.

Q. Fix the date, if you can, when you became connected with the firm.

A. In January, 1878.

Q. Now, what has been the market value of defendants' volumes 1 to 31 Ills. Rep. from that time on?

1430 A. That depends a little on how they sold, in sets or otherwise.

Q. State both ways.

A. The lowest price I should fix, in sets, at $5 per volume; in odd volumes, ranging from $6.50 to $7.50. Many of the early volumes are not stereotyped, and the stock is not uniform in price.

Q. How many and which ones are not stereotyped, from 1 to 31?

A. Vols. 2 to 18, inclusive; however, since that time, during the past two or three years, we have stereotyped a few of these volumes, some three or four.

Cross-examination by Mr. COTHRAN:

Q. Mr. Flood, who fixed the market price of defendants' volumes that you have just spoken of; was it your firm who fixed it or who?

A. The price was pretty well established when I joined the firm. I couldn't testify as to who it was or how it was done.

Q. Didn't the defendants control the market of new copies of these volumes?

A. Yes, sir; at that time. There possibly might have been a few scattering ones, but my impression is that we controlled them.

Q. Didn't they practically fix the price?

A. I presume the price was fixed by them, but prior to my engaging with the firm.

1431 Q. Mr. Flood, is there any way by which you can tell the exact number of copies of each of the volumes, 39 to 46, inclusive, that your firm purchased directly or indirectly from Mr. Myers and sold since the stipulation of March, 1881?

A. No, sir; I should judge not—the exact number of copies.

Q. Do you know how many of each or either of these volumes your firm so purchased and sold?

A. No; I could not testify to the exact number; we bought more of one number than another; quite a number in the aggregate, though.

Q. Now, do I understand you, Mr. Flood, when you say that after the stipulation of March, 1881, there were no copies of vols. 39 to 46, inclusive, sold that you know of no copies being sold, or that there were in fact none sold by the defendants?

A. I testify in this way: I am pretty active about the business there; put in as many hours as anybody does; am there until the store closes usually.

Q. I simply want your knowledge as to what I am to understand by your answer.

A. There were no copies of our stock sold; none to my knowledge.

Q. Then, your answer is that there were none of those copies of the disputed edition sold after that time, of your knowledge?

A. Not to my knowledge, and I should certainly know if they were sold.

1432 Q. Mr. Flood, after the stipulation of March, 1881, did your firm purchase and recall any second-hand copies of what is called the Callaghan edition of either of these volumes?

A. I am inclined to think we have. I think we have not questioned as to what edition it was when we bought second-hand volumes.

Q. Have you any second-hand copies of either of these volumes on hand now, 39 to 46, inclusive?

A. My impressions are that we have not.

Q. Have you any means of telling the exact number of second-hand copies of the Callaghan edition of vols. 39 to 46, inclusive, that you purchased and resold since the stipulation of March, 1881?

A. No; I should say not; not anything definite, because we, perperhaps, have bought some for cash and no record would be made of them; not many, however.

Q. Mr. Flood, in looking over the books of Callaghan & Co. there are a number of instances where there are sales of Illinois Reports there marked, "Partly second-hand;" is there any mode by which you can tell which volumes included in such sales were second-hand and of what edition?

A. No; not to say just what volumes were second-hand, but I am safe in saying that in all cases 39 to 46 were second hand. I
1433 am safe to testify to that unless possibly some few might have been bought of Mr. Myers.

Q. I want to ask you is there any means by which you can tell from your books which volumes included in the sale were the second-hand copies?

A. That is utterly impossible.

Q. Was there any means by which Mr. Clement, in making the examination he did of your books and the tabulative statement, could determine which volumes included in the sales where they are marked part second hand, which of the volumes were the second-hand copies?

A. No; there was nothing on the books showing, I guess, unless in isolated cases.

Q. Not unless stated in the book?

A. No, sir; not that I know of.

Q. Is any other book kept by you from which that information could be derived?

A. No, sir.

Q. How many men have been connected with the firm of Callaghan & Co. since March, 1881, and have been engaged in selling books for them?

A. There has been some six or eight, I should say.

Q. Were the sales all made in the store or not?

A. No; there have been some sales made on the road—by men on the road—our canvassers.

1434 Q. I notice in my questions in relation to the purchase and sale of second-hand copies that I have limited them to March, 1881. Would your answers apply to purchases and sales of second-hand copies prior to that date, as to whether you could tell the number purchased and sold?

A. Our custom in that respect has been the same throughout; it is common with the trade generally.

Redirect-examination by Mr. HIGH:

Q. Please describe what is known as the manufacturers' book, from which Mr. Clements states that he took his figures as to the number of volumes manufactured; describe how kept.

A. The book known as the manufacturers' book is an account of each book published by us—simply as an account of an individual—the expense of manufacturing the book, expense of plates; first, paper and next press-work, then an entry showing the number of volumes manufactured. The next entry we have there is showing the number of volumes bound from the binder, the balance of the sheets, as a rule, going to the store-room, and are taken from the store-room from time time in lots of ten to twenty, thirty, fifty, or one

1435 hundred numbers, and as the bill is rendered it is charged up to that edition—charged up separately as to an individual.

Q. Is that a book of original entries, in which these transactions are entered from day to day as they occur?

A. Yes, sir; each item is charged up to the book.

Recross-examination by Mr. COTHRAN:

Q. Were not the majority of the entries in the manufacturers' book shown to Mr. Clement kept in pencil?

A. Yes, sir—that is, — the best of my knowledge.

Q. Have you no other copy kept in ink?

A. No, sir; we have but one—that is, we had an earlier one, but it is filled up. We have no duplicate copies.

Q. Will you, during this examination, produce the one kept in ink?

A. I have not testified that we have any kept in ink.

Q. You have two manufacturing books, have you not?

A. What I mean to say is we have one that has been in use for a year back and one taken up when that was filled. It is our own manufacturers' book to-day. There are no duplicate entries.

Q. Will you kindly bring into the court the one which you call your credit manufacturers' books that the master may see them?

A. I do not know as to that; I presume so; I do not pre-
1436 sume we have any objections to bringing them both in. If the master will look and see them we will be pleased to bring in both books.

Mr. HIGH: One is a continuation of the other, I understand?

A. Yes, sir.

By Mr. HIGH:

Q. When you boxed these copies of books after the making of the stipulation in March, 1881, as you have testified, what, if anything, was done with reference to making an actual count of the volumes then stored away?

A. There was a list of the number of copies of each volume made out at that time.

Q. From an actual counting?

A. Yes, sir.

Q. What was done with that list?

A. The list was enclosed in an envelope and put in the box with the books—that is, each envelope showing the contents of the box—that is, the list enclosed in the envelope, I should say.

Q. And these books, you have testified, remained in the same condition until opened for the purpose of being counted by Mr. Clement a few days ago?

A. Yes, sir.

Q. In what condition did you find these copies when you opened them for Mr. Clement to count them with reference to the comparison of the number originally counted?

1437 A. I counted the number of copies of each volume, comparing with the list for the purpose of verification, and I found it to be correct.

Q. You have already stated that no copies of 39 to 46 were sold by the defendants of their edition during this period. I ask if any had been sold would you be likely to know it?

Mr. COTHRAN: I object to the question.

A. I would.

Q. What is the fact as to whether you personally have handled the sets of Ills. Rep's that have gone out of the store-room?

A. I paid particular attention to odd volumes and sets going out of the store while with the firm.

Q. You are not engaged in travelling?

A. No, sir.

Q. And your duties have been wholly in the store?

A. Largely so. Yes, sir; I may say always.

By Mr. COTHRAN:

Q. Who made this list you speak of that was put in the box?

A. One of the clerks.

Q. Did you take any part in making the list?

A. No, sir; in fact, it had escaped my attention up to the time of opening the box, when Mr. Clement wanted to count the
1438 books. I had some recollection of some of the young men getting instructions to make out a list and enclose with the box.

Q. What is the date of it?

A. I couldn't say as to that.

Q. Where is it?

A. I think it has been destroyed, but I am not positive; it may be with the books now.

Q. Where was it kept after it was put in the envelope until next seen?

A. With the box of books.

Q. In the box?

A. I think that one was in the box and the other tacked on the outside and sealed. It is possible that both of them were tacked on the outside.

Q. Then I understand a list was made for each of the boxes?

A. Yes, sir.

Q. When were those lists last seen?

A. They were seen upon opening the boxes and counting them, some few weeks ago, with Mr. Clements.

Q. Were they shown to Mr. Clement?

A. No, sir; not that I know of.

Q. Are they in existence now?

A. I couldn't state as to that.

Q. Will you please ascertain and produce them, if you have them?

A. Yes, sir.

Q. Mr. Flood, can you account for how the four to six or
1439 whatever number of copies of v. 40 of defendants' edition got out of your store?

A. I think that there are four copies that have gotten out of the store. They got out in this way: As near as I can remember, I think that the copy in Mr. High's hands was called for by him for the purpose of examination. The second copy was taken by Mr. Cole; I presume — took it himself, but was authorized to do it; had a right to do it for the purpose of making his measurement, and after making his measurement he retained a copy, as was the case in all of our publications. The third copy was in the hands of Prof. Ewell. I cannot think how it reached him. He told me some time ago—I think he told Mr. Clark and I—he was the editor engaged in editing some of the volumes of these series. It was a sort of an editorial copy. The fourth copy can be accounted for, I think, beyon- a question of doubt.

Q. Did the firm of Callaghan & Co. purchase Mr. Ewell's said Ills. Rep's?

A. I cannot positively say; I think they did, though. They went into the hands of another party, whether we purchased them or they were purchased by others.

Q. Do you have any personal knowledge of any copies of v. 40 being sent to the Librarian of Congress?

1440 A. No, sir; my impression is that they were not sent there; still I couldn't swear positively as to that.

Q. You filed the title page, did you not?

A. That I couldn't say; it was prior to my entering the firm.

And thereupon defendants read in evidence the deposition of Sheldon A. Clark as follows:

JUNE 17, 1884.

SHELDON A. CLARK, a witness called on behalf of defendants, being duly sworn, was examined in chief by Mr. HIGH, and testified as follows:

Q. Are you one of the defendants in this case and one of the firm of Callaghan & Co.?

A. I am.

Q. And you have been a member of the firm since when?

A. Since July 1, 1875.

Q. Do you remember the circumstances of the stipulation made by the defendants March 9, 1881, not to sell vols. 39 to 46 until further orders?

A. Yes, sir; I was notified of it.

Q. How soon?

A. My impression is the day after the stipulation was made. I think the stipulation was made in the evening and I knew the next morning; that is my impression.

Q. What was immediately done by the defendants with these vols. 39 to 46, exclusive of 40, to which I will refer in another question?

A. They were stored away, with instructions not to touch them or sell them—not to dispose of them in any way.

1441 Q. Were those instructions given to all of your employés?

A. Yes, sir.

Q. In what manner were they stored?

A. They were taken from the shelves and stored in the basement, in bins or in boxes—I think first in bins and a short time after in boxes—first taken below in bins, then taken out of the bins and boxed, and have remained in that condition since.

Q. Were they very soon afterwards boxed?

A. Yes, sir; and have remained so since, except when opened for examination.

Q. To be counted by Mr. Clement?

A. Yes, sir.

Q. Have any of them been sold by the defendants or given away by them since the making of that stipulation?

A. To the best of my knowledge, there have been none sold or given away since that time.

Q. You know that they remained boxed up until counted by Mr. Clement?

A. Yes, sir.

Q. What was done as to reboxing or restoring them after Mr. Clement made the counting?

A. I was present when the books were taken from the boxes. Mr. Flood and I were present, although he took the most active part in it, and I saw the books repacked.

Q. On the same day?

1442 A. The same day, within a short time—within a few minutes—after.

Q. And they have remained in that condition ever since?

A. Yes, sir.

Q. I will ask whether any of these volumes have ever been offered for sale or exposed on the shelves of the defendants for sale or otherwise offered since that stipulation?

A. No, sir; none of our stock on hand at that time has been offered for sale.

Q. What was done by the defendants with v. 40 immediately after it was reprinted?

A. A small number of these books were bound; I think the balance were stored.

Q. What was done with the copies of your edition of v. 40 that were bound?

A. The book has never been published; never sold. A few copies were bound, as I say; I do not know how many, and I think that four or six may have been put into the hands of, or gotten into the hands of, parties, but not as sales.

Q. What was done by the defendants with the copies of v. 40 bound, aside from these four or six that you speak of?

A. They were stored away and remain in our store in the basement.

Q. In boxes or cases, packed up?

A. They were stored in the basement, but whether packed or not I couldn't say positively.

Q. Were any ever sold by the defendants.

A. No, sir.

1443 Q. From what source did the defendants obtain the copies of v. 40 which they have sold during this controversy and which Mr. Clement mentions in his Ex. A?

A. They were procured in different ways; some were bought second hand from people and others bought through parties who bought them from Mr. Myers. They were all bought either second hand or indirectly through Mr. Myers.

Q. Were they all Mr. Myers' edition?

A. Yes, sir.

Q. What is the fact as to whether your firm have sold any copies of Mr. Myers' edition of vols. 39 to 46, excluding v. 40, since this stipulation; and, if so, from what source have you obtained them?

A. Yes, sir; we have sold copies of his edition. We obtained them in the same manner that we did v. 40.

Q. That is, either second hand or indirectly through Mr. Myers?

A. Yes, sir.

Q. What is a fact as to whether the receipts shown on the sales books of the defendants for vols. 39 and 41 to 46 during the period in controversy are greater or less than the actual amounts received by the firm for these volumes?

A. The system of selling books in sets was to sell the set at a certain price, had a fixed price for the set, then deduct, either as
1444 a matter of convenience or as a matter of satisfaction, a certain price for the volumes that were not furnished, which was usually larger than the price received for these books.

Q. By whom was that price deducted generally fixed?

A. In many cases fixed by the customers themselves as a matter of satisfaction or guarantee that they were to get those books. Sometimes it was fixed by ourselves simply as a matter of convenience.

Q. Now, was that price at which they were deducted and at which they were afterwards reported sold when the sale was completed generally greater or less than the price really received?

A. I can speak from personal knowledge, having sold more sets than anybody else connected with the business, that the price was in all cases larger than *larger than* the actual price received. The price deducted was always larger than the price received in all cases.

Q. Have you been familiar with the market price of vols. 1 to 31, inclusive, of the defendants' Ills. Rep's since your connection with the firm?

A. Yes, sir.

Q. What has been the market price of the defendants' volumes 1 to 31, inclusive, since the spring of 1877?

A. At that time the price of vols. 2 to 18, inclusive, in the
1445 spring or winter of 1877, prior to the time we began the reprint of vols. 19 to 31—the price of those books, 2 to 18, was $6 per volume, whether in sets or otherwise; previous to our purchase from Gilbert $6 when sold in sets. In February, 1877, we made an announcement of the reprint of vols. 1 and 19 to 38, inclusive, 21 volumes, $6 when sold separately, and $5 when sold in sets. The price, $5, in sets of 21, $105, or $6 for odd volumes; and that was the price they were sold at.

Q. Were the prices substantially the same during the period in which you were selling your edition of 39 to 46?

A. The price has never been less, to my knowledge—that is, as a rule. The rule was to sell at this price. In isolated cases the price may have varied one way or the other.

Q. What has been the condition of vols. 1 to 18 as to being stereotyped or otherwise?

A. There are none stereotyped. There is a limited stock of some of these volumes, and they are always held on that account higher. I can say here that there was a limited stock of these books at the time we purchased them previous to beginning the reprint of these volumes 1 to 18, inclusive.

Q. What is a fact as to whether any copies of defendants' edition

39 and 41 to 46 were given away to editors and friends or otherwise, if you know?

A. There were copies so given away.

1446 Q. Are you able to state how many?

A. I could not state how many. The number usually depends upon the man.

Q. Did some go to the press for review?

A. Yes, sir.

Q. That is your usual custom?

A. Yes, sir; our usual custom is to be very liberal.

Q. How many do you send to the Librarian of Congress?

A. Two copies.

Cross-examination by Mr. COTHRAN:

Q. When did you go into the employ of Callaghan & Co.?

A. The first day of February, 1871.

Q. How long a time did you travel for that company as a salesman?

A. More or less from the first of April, 1872, until, I may say, almost constantly up to 1879.

Q. How has it been since 1879?

A. I traveled part of the time during the year 1880 and a little in the early part of 1881.

Q. Down to what time in 1881?

A. I was engaged not exactly in travelling a good portion of the winter of 1881. I was away from the store up to some time in May. I could not state exactly when.

Q. From the first of January, 1881, down to May, 1881, what portion of the time were you in the store?

1447 A. I could not exactly say as to that. I was away from the store up to 1879, and after that I was at the store a good deal of the time. From the first of April, 1872, until the first of January, 1880, my business was principally away from the store as a travelling salesman.

Q. What portion of the years 1880 and 1881 were you absent as a salesman from the store?

A. I should say more than half the time during 1880 and very little of the time during 1881. I couldn't tell exactly, but I never traveled so extensively since 1879.

Q. Have you not traveled any since May, 1881?

A. I may have traveled some. I couldn't say positively.

Q. Since January, 1877, how many salesmen have Messrs. Callaghan & Co. employed, including members of your firm?

A. I should say seven or eight, but I couldn't say positively.

Q. How many of these were traveling salesmen?

A. All the men engaged as salesmen were traveling salesmen, engaged exclusively for that purpose.

Q. Mr. Clark, in looking over the sales books of the defendants there are a number of instances where there are entries of sales of

sets or parts of sets of Illinois Reports, including volumes in
1448 question, where they are entered as part second hand. Have you any means of telling which of the volumes in these sales were the second-hand books?

A. No, sir; we have no means of telling all the volumes that were second-hand or all that were new.

Q. You kept no record from which that fact could be definitely learned?

A. We kept no record in the case of Illinois Reports any more than we did in the sale of other sets sold part second hand.

Q. Where there are sets part second hand there is no means of ascertaining which volumes are the second-hand volumes?

A. Not at this time; no, sir; not after the books were shipped, as a rule.

Q. After the publication of 39 to 46, inclusive, by defendants did they repurchase and resell any copies of these volumes, or either of them, of the Callaghan edition (the volume- in question, 39 to 46)?

A. We may have purchased and probably did some of the volumes, 39 to 46, inclusive, of the Callaghan edition second hand.

Q. Have you the means of telling how many copies of either of these volumes you so purchased and resold?

A. I have no means of telling the exact numbers of such copies.

Q. Have you any means of determining the number of copies of the Myers edition of the volumes in question that your firm
1449 have purchased and sold since February, 1881?

A. Our custom in purchasing the second-hand books was not to make a note of the editions.

Q. Then your answer is you have no means.

A. We have no definite means of determining the number of copies sold, but there were a great many.

Q. Have you any knowledge how the four, five, or six copies of v. 40 of the Callaghan edition that you have spoken of got out of the defendants' store into the hands of other persons?

A. Nothing further than has been gone over in the testimony of Mr. Flood.

Q. You have no doubt that from four to six copies of that volume are afloat somewhere, have you?

A. I understand that there are three or four copies, exclusive of the copies sent to the Librarian of Congress, that cannot be accounted for—that is, they are not in stock.

Q. Do you know the fact, Mr. Clark, that any copies of v. 40 were sent to the Librarian of Congress?

A. No further than that it is our usual custom; I do not know that they were, but that is our custom.

Q. When you speak of there being no copies of vols. 39 to 46 sold after the stipulation of March, 1881, do you mean to be
1450 understood that no copies were sold, or that you have no knowledge of any being sold?

A. None of the copies on hand at that time have been sold since the stipulation was made.

Q. Have you been in the store all the time since then?

A. No, sir; I have not been there all the time, but I have been there most of the time, and then I know that the order was imperative to everybody connected with the business that no copies were to be sold; they were boxed and put away, and are now in our possession.

Q. Mr. Clark, when was v. 39 reprinted by the defendants?

A. I cannot fix the date of its publication.

Q. Who printed v. 39?

A. I cannot state that without reference to the books. I may say here that it has not been my custom to give much, or any, or very little, attention to the manufacturing part of our business. The time that book was published I was traveling on the road.

Q. You have the means of telling who stereotyped, printed, and bound the different volumes, 39 to 46, inclusive, have not you?

A. I suppose that our books will show.

Q. Mr. Clark, you spoke of the price of volumes that were not delivered at the time of sales and which were deducted on your
1451 books as being greater than the price you received. Can you state any instance where that was the fact?

A. Yes, sir.

Q. Proceed.

A. I can state instances where the price deducted was made imperative upon the part of the purchaser that it should be more than three times or twice the value of the reports deducted. One case where I sold several reports to the firm of Lyon & Kilpatrick, of ——, they deducted $100 for 11 volumes. They were to hold back $100 until the set was complete. The books sold at that time at $4.50 per volume when sold in sets.

Q. Can you name any other instance?

A. Yes, sir; C. O. Anthony, Missouri. I could name a good many, if necessary, where I spent half a day. I think the price deducted for a very few volumes was $50. I know one Thanksgiving I spent the whole afternoon upon the question of the amount to be deducted for a few volumes, being so much in excess of the price that was asked, and I can state here in connection that the price deducted by myself was $5 per volume; sometimes $4, but at that time it was quite frequent that purchasers told me they could get Mr. Myers' books for $3.50, and if I would deduct $5 per volume they
1452 would get the books, and it was upon these conditions that the reductions were made.

Q. Do I understand you, Mr. Clark, that the price stated on your sales books, no time delivered with the set were deducted furnish no indication of the price at which sold?

A. The price that appears on our sales books is fixed in two ways; it furnishes a price greater than the book was sold at.

Q. Does it indicate in any way the price at which the book was sold?

A. The sale of the set itself is an indication of the price at which the books sold.

Q. The price of the set?

A. Yes, sir; not as individual volumes.

Q. What I want to ask you, Mr. Clark, is where a certain number of volumes deducted from a set at the time delivered and the price set opposite these volumes deducted in your sales book, does that price indicate the price at which these volumes sold?

A. It indicates a greater price, as a rule, than they were sold at.

Q. Does it indicate the price at which these volumes sold? Yes or no, if you please.

A. It does not.

Q. Did the firm of Callaghan & Co. purchase a number of copies of different volumes of Illinois Reports, vols. 1 to 18, inclusive, of Mr. Gilbert, of St. Louis?

1453 A. Yes, sir; sheets and bound copies.

Q. When was the purchase made?

A. I cannot state.

Q. About what year?

A. I cannot fix that, even; it was previous to the publication of any of these volumes, though.

Q. 39 to 46?

A. Yes, sir.

Q. How large a number of copies did they purchase of Mr. Gilbert?

A. It was a limited stock; I couldn't state the number of them.

Q. Did they purchase Mr. Gilbert's entire stock of these volumes?

A. They purchased his stock; yes, sir—that is, I suppose so.

Q. At what price per volume?

A. It was a purchase that was made previous to my being a member of the firm, and I couldn't state.

Q. Mr. Clark, after the purchase by defendants from Mr. Gilbert, of St. Louis, didn't defendants control practically the market of vols. 1 to 31, Ills. R., inclusive?

A. They might, after the purchase.

Q. Is it not a fact that they did?

A. At the time the purchase was made vols. 1 and 19 to 38, inclusive, were out of print.

Q. I am only asking as to 31. Since that purchase haven't

1454 they practically controlled the market price of vols. 2 to 31, inclusive?

A. I suppose of new copies they have.

Adjourned to Wednesday, June 18, 2 p. m.

WEDNESDAY, *June* 18, 1884—2 o'clock p. m.

THOMAS H. FLOOD recalled for further examination by Mr. COTHRAN:

Q. Mr. Flood, who did the composition of vols. 39 to 46, inclusive?

A. G. J. Titus & Co., v. 39; David Atwood, v. 40; Mills & Co., vols. 41 and 42; David Atwood, 43, and I am not quite sure, but I think that David Atwood did the composition of v. 44; David Atwood, vols. 45 and 46.

Q. Where did T. J. Titus & Co., David Atwood, and Mills & Co. transact business?

A. T. J. Titus & Co. were located in Chicago; David Atwood, in Madison, Wisconsin, and Mills & Co., Des Moines, Iowa.

Q. Who did the press-work of vols. 39 to 46, inclusive?

A. The press-work was done by Haslett & Read of v. 39; v. 40, by David Atwood; vols. 41 and 42, by Mills & Co. I think vols. 43 and 44, by David Atwood—that is, to the best of my knowledge—and vols. 45 and 46, by David Atwood.

Q. Who did the binding from 39 to 46, inclusive?

A. Vols. 39, 40, and 46, by Cox & Co.; vols. 41, 42, 43, and 44, by Cox & Co., to the best of my knowledge, but I am not quite
1455 sure of the last.

Q. Who stereotyped them?

A. I do not know as I could give you that information, because the stereotyping was not done in all cases by the parties taking the contract from us—that is, they had a printing office and did the composition and then sublet. I think it is safe to say Cox & Co. had a foundry. They had then, and I presume they have now, and Mills & Co. had one.

Q. That includes all but one?

A. Titus & Co. sublet.

Q. Did you let contracts for printing and stereotyping these different books?

A. Yes; we let the contract and agree upon a price, so that if we make contract with a man like Titus, who has no foundry, he gets the stereotyping done where he chooses.

Q. Cox & Co. are a firm in this city?

A. Yes, sir.

Q. Mr. Flood, can you tell when the firm made a purchase of a number of copies of volumes 2 to 18, inclusive, Ill. Reps., the number of copies purchased, and the price at which purchased?

Counsel for defendants objects to the question and instructs the witness that he is under no obligation to answer without further order of the court.

Q. Mr. Flood, do the firm of Callaghan & Co. possess means of furnishing an answer to the last question?

1456 A. So far as my search—I made something of a search—I find no invoice on file.

Q. If such a purchase as my question called for had been made and a purchase of considerable quantity, wouldn't your books furnish evidence of the purchase?

A. I cannot say as to that. I do not know what the firm's system of doing business was at that time. I know what it does now and what it has been doing since I became a member of it.

Q. At the time of the transaction between Callaghan & Co. and Mr. Gilbert were you a member of the firm or in the employ of the firm?

A. Neither.

Defendants rest their proof.

Mr. HIGH: I also offer for the examination and use of the complainant and the master the 25 sheets referred to by the witness, James Callaghan, in his testimony concerning the statement or summary of his, marked Ex. 1, already marked; not in the record, but submitted for the use of all parties. I also state that I shall use in argument before the master and before the court such portions of the testimony and the depositions previously taken as may be pertinent to the inquiry before the master.

It is stipulated that the signatures of all witnesses introduced by either party to their depositions may be waived.

1457 Before Bennett.

MONDAY, *July 7th*, 1884—2 o'clock p. m.

Counsel for parties again appeared, and counsel for complainant moves the master to rule upon the objection made on the 17th ult. to Defendants' Exhibit 1, offered by them in evidence, which motion is argued by counsel, and the master takes the same under advisement.

By Mr. HIGH: Counsel for defendants states that the witness, James Callaghan, who produced and identified the exhibit marked Defendants' Exhibit 1, left the city for Europe a few days after complainant closed his proof on this hearing, supposing that no further testimony was desired from him, and counsel for defendant is ready and willing to produce this witness for further examination or cross-examination concerning this exhibit or any other branch of the case upon his return, about September 1.

By Mr. COTHRAN: Counsel for complainant states that the testimony taken on reference to the master, Bishop, concerning vols. 32 to 38, inclusive, shows that a witness by the name of George W. Beck prepared the statement of expense of publication and sale of the volumes on which the columes of expense contained in the paper which the defendants now offer in evidence is based; that
1458 Mr. Beck is now in the city of Chicago, and can be called as a witness, and that the testimony also shows that Mr. James Callaghan was not the book-keeper of Callaghan & Co. at the time these expenses were incurred. The statement of expense made by Mr. Beck and included in James Callaghan's statement do not cover the last two or three years in which the proofs as to the volumes now on hearing show sales were made.

E. B. MYERS *vs.* CALLAGHAN & CO.

JULY 2ND, 1884.

Counsel for parties being present, the master stated at the time Defendants' Exhibit 1 was offered in evidence the complainant's counsel objected to its introduction on the ground that, except as to first four columes, showing the number of volumes, the number of copies of each volume, the total receipts, and the average receipts per volume, the same was not proven by any evidence in the case;

the question as to the admissibility of the exhibit as a whole was reserved, and I am now asked to pass upon this question. The witness James E. Callaghan, when first introduced and questioned on behalf of the complainant, was asked to prepare a statement
1459 showing the items included in the first four columes of this Exhibit 1. Subsequently he appeared again as a witness and exhibited, in connection with his testimony, twenty-five sheets covering the matters inquired about by complainant's counsel. He also, in that connection, stated that he had prepared the paper subsequently marked Defendants' Exhibit 1 as a summary of these twenty-five sheets. Complainant's counsel asked what the paper was, simply with a view of its identification, and then proceeded to inquire with reference to the four columns at the *feft* hand of Exhibit 1, and on the subjects involved in those columns the witness testified. In answer to the question, whose sole object was identification of the paper, the witness made a voluntary statement with reference to the remaining columns, embracing the total cost, among other items. This was, in substance, all the evidence which was given by the witness with reference to Exhibit 1, except so far as relates to the first four columns above referred to. I do not think that this evidence, which was solely in the way of identification of the exhibit, and in which the witness' attention was not particularly called and he was not questioned with reference to the accuracy of these additional columns, so far proves these additional columns, embracing the items "stereotype and composition,"
1460 "paper," "press-work," "binding," "editorial work," "expense account," and "total cost," of Exhibit 1, in these respects objected to, that they can be considered as evidence in the case. Hence, I must rule that, so far as these additionel columns are concerned, and which are above referred to, the exhibit will not be treated as evidence on this reference sufficient to establish the facts claimed in these columns, and it will be necessary to introduce further proof upon those subjects, the ones of which the master holds to be upon the defendants; to which ruling of the master the defeudants, by their counsel, excepted.

And thereupon defendants read in evidence the deposition of Edward J. Hanlon, as follows:

THURSDAY, *July* 31, 1884—2 o'clock p. m.

EDWARD J. HANLON, a witness called on behalf of the defendants, being duly sworn, was examined in chief by Mr. HIGH, and testified as follows:

Q. State your name in full, your age, residence, and occupation.

A. Edward J. Hanlon; age, twenty-seven; occupation, bookkeeper; residence, Chicago.

Q. How long have you been engaged in the business of bookkeeper?

A. Seven years,

Q. Are you connected with the firm of Callaghan & Co in any way; if so, in what capacity, and for how long have you been so engaged?

A. I have been connected with the firm as book-keeper for
1461 about three years; not quite three years.

Q. Have you recently made an examination of the books of Callaghan & Co. to determine the cost of their volumes of Illinois Reports, including 39 and 41 to 46, inclusive, involved in this case?

A. I have.

Q. What book or books did you examine for that purpose?

A. The manufacture-'s book.

Q. That is the same which has already been referred to in the evidence in which a record is kept of all books manufactured by them?

A. Yes, sir; it is.

Q. State whether that book contains all the information concerning the cost of stereotyping and composition, paper, press-work, and binding of these volumes.

A. Yes, sir; it does.

Q. From what source or book did you obtain the information as to the cost of the editorial work?

A. I took it from the ledger account of the different parties who did the work on these books. I will state further that it was afterwards verified by the journal.

Q. Have you examined also the statement prepared by the witness, James E. Callaghan, which is marked "Defendants' Ex. 1" in this case, with reference to the cost of producing these volumes?

A. I have.

1462 Q. I will call your attention to the fifth column of that statement prepared by the witness, James E. Callaghan, headed "stereotyping and composition." State whether that does or does not correctly represent the cost of the stereotyping and composition of these volumes in question as you found it upon your examination of the books.

A. It represents it correctly; yes, sir.

Q. Does that include changes, if any, that were made in the plates, as appears by the manufacture-s' book?

A. It does.

Q. So that the figures given in this fifth column of "Defendants' Ex. 1" represents the entire cost to the defendants of the stereotyping and composition of the volumes in question, including such changes as were afterwards made on the plates, over the first cost?

A. Yes, sir; it does.

Q. I will ask you to state what amount appears to have been paid for changes and corrections of the plates on any of these volumes, beginning with v. 39; state first the original cost of the stereotyping and composition and then the changes and corrections in plates, giving the items separately.

A. V. 39, July 31, 1878, defendants paid $661.80 for the plates.

1463 Q. That includes the stereotyping and composition, does it not?

A. Yes, sir.

Q. If they paid anything for changes or corrections on the plates of v. 39 state what amounts and under what dates.

A. December 17, 1878, paid for corrections $178.32; January 4, 1879, for changes, $467.33.

Q. Were any changes or corrections made in the plates of vols. 41, 42, or 43?

A. No, sir.

Q. How was it with regard to v. 44? State what was paid for the composition and stereotyping originally, giving the date, and then state what, if any, change was made and what was paid for such changes of the plates, giving the dates.

A. February, 1878, we paid for the original plates $774.32; for changes, April 18, 1879, $690.12. .

Q. Were any changes or corrections made in the plates of vols. 45 and 46, as appear by the books?

A. No, sir; there were not.

Q. I will call your attention to the sixth column of "Ex. 1," purporting to give the cost of the paper used in these different volumes, and state whether you found that correctly given in this column for each of the volumes.

A. Yes, sir; I find that is correct.

Q. The seventh column is headed "press-work." What do you find as to whether that does or does not correctly represent
1464 the amount paid by the defendants for the press-work on these different volumes?

A. I find it correct.

Q. The eighth column purports to give the cost of binding of these different volumes. State whether that does or does not correctly represent the binding as you found upon your examination of the books.

A. Upon examination I find that the cost of binding is a little more than is given on this "Ex. 1." There is a slight discrepancy in this "Ex. 1."

Q. You made it a little more than the witness, James E. Callaghan, made it?

A. Yes, sir.

Q. But you prefer to give his figures because they are smaller; is that it?

A. Yes, sir; that is it.

Q. The next column is headed "editorial work." I think you said you obtained that from the ledger account, which was verified by the journal?

A. Yes, sir.

Q. State the result of your examination of the cost of the editorial work as compared with that of James E. Callaghan, as shown on this "Ex. 1;" whether more or less.

A. I find considerable more than what is down on this exhibit, but prefer to put them in as they are here, because they are smaller.

Q. The next column is headed "expense account, 17 per cent." From what source did you obtain the information as to the
1465 expense being 17 per cent. of these sales?

A. I found it on the exhibit already put in evidence in this case by Mr. Beck.

Q. You read his deposition, did you, and examined his exhibit?

A. I did; yes, sir.

Q. State whether you figured out yourself this 17 per cent., making the compilation in your own figures; and, if so, whether the column in "Defendants' Ex. 1," under the head of "expense account, 17 per cent.," correctly represents the expense of these sales.

A. Yes, sir; it does.

Q. Your figures tally exactly with those of James Callaghan?

A. Yes, sir.

Q. On what did you figure this 17 per cent.; what did you take 17 per cent. of in order to obtain this result shown in this column?

A. I took 17 per cent. of the total receipts.

Q. For these different volumes in question?

A. Yes, sir.

Q. The last column in this exhibit is headed "total cost." Did you compute that; and, if so, how does it compare with that made by the witness, James E. Callaghan?

A. I computed it and found it to be correct.

Q. How did you make up that column or computation?

A. By adding the six last columns together.

Q. And that last column represents the total cost of pro-
1466 ducing these volumes upon that basis of computation?

A. Yes, sir; it does.

Q. Then, if I understand you, the result of your examination corresponds exactly with that of James E. Callaghan as shown in his statement marked "Defendants' Ex. 1," except that you make the cost of binding a few cents more than his and the cost of editorial work more than his?

A. Yes, sir.

Counsel for defendants again offers in evidence the statement marked "Defendants' Ex. 1" as prepared by the witness, James E. Callaghan, and identified by him and the present witness.

Q. Have you made an examination for the purpose of determining the dates of the publication of each of these volumes?

A. I have; yes, sir.

Q. You may give the date of the publication of each volume.

A. V. 39, January 25, 1879; v. 41, April 26, 1879; v. 42, December 10, 1878; v. 43, September 23, 1878; v. 44, April 26, 1879; v. 45, March 19, 1879; v. 46, October 28, 1878.

Counsel for plaintiff being absent and plaintiff being present in person, it is stipulated that counsel for plaintiff may hereafter enter any objections which he may think proper to the testimony of this witness, and the further hearing is continued until such time
1467 in September as may be agreed upon by counsel, when counsel for plaintiff may cross-examine the witness if he desires

And thereupon the defendants read in evidence the continuation of the deposition of Edward J. Hanlon upon further cross-examination as follows:

WEDNESDAY, *Sept. 17th*, 1884—2 p. m.

EDWARD J. HANLON, a witness on behalf of defendants, recalled, cross-examined by Judge COTHRAN, testifies:

Q. Mr. Hanlon, were you connected with the firm of Callaghan & Co. during the time of the publication and the sale of vols. 39 to 46, inclusive, Illinois Reports?

A. No, sir; I was not connected with them during the publication of those books.

Q. When did your connection with that firm commence?

A. August, 1881.

Q. Were there any sales made of copies of either of these volumes since August, 1881?

A. No, sir; not that I am aware of.

Q. Have you, then, any personal knowledge of any of the matters pertaining to the publication and sale of these different volumes that you have testified about?

A. Nothing further than I knew there was a suit pending in the court here at this time; no, sir.

Q. The only knowledge you have about these matters as to which you have testified is derived from the examination of the
1468 books of Messrs. Callaghan?

A. Yes, sir.

Q. As to the correctness of these books you have no personal knowledge?

A. No, sir; I have no personal knowledge.

Q. Then your testimony that you gave in chief is based upon entries which you found in books owned by Messrs. Callaghan & Co.?

A. Yes, sir.

Q. Entirely?

A. Yes, sir.

Q. And these entries were all made prior to your connection with the firm?

A. Yes, sir.

Q. In your testimony-in-chief, in relation to volume 39, you said that on July 31st, 1878, defendants paid $661.80 for the plates, including stereotyping and composition; that subsequently, on December 17th, 1878, they paid for corrections $178.32; January 4th, 1879, they paid $467.33. Explain what you mean by corrections and changes in that testimony.

A. I cannot explain that further than the book. The manufacturers' book stated that it was for corrections in plates.

Q. And you have no other knowledge than what appears by those entries?

A. No, sir.

Q. Is that so in relation to your testimony as to changes in other lumes?

1469 A. Yes, sir.

Q. You testified in relation to the 17 per cent. on the expense account; from what source did you derive your information?

A. From the statement that was handed in here by Mr. Beck.

Q. Where is that statement?

A. It is on file here as an exhibit. I do not know where it is.

Q. Then, Mr. Hanlon, what you referred to as Mr. Beck's statement is a consolidated statement; is it not in the column showing the expense for different things?

A. Yes, sir.

Q. And you were speaking from a statement that is annexed to the deposition of Mr. Beck on file in this case?

A. Yes, sir.

Q. In the statement to which you refer are there any items given which go to make up this 17 per cent. or to show how it is made up?

A. Yes, sir; as I remember his statement there are items of that kind.

Q. Is the statement which I now show you, marked Exhibit A to the deposition of George W. Beck, the one you referred to in your testimony?

A. Yes, sir; it is.

Q. In arriving at the 17 per cent. did you compute it on the figures taken in this statement of Mr. Beck's?

1470 A. No, sir; I did not compute it. I just took those figures as it is given here in his testimony. I did not compute his statement.

Q. Then you didn't figure out the 17 per cent. yourself, did you?

A. No, sir; not on that statement. I did not.

Q. On what statement, then, did you figure it out?

A. On this statement (indicating).

Q. Then you figured it on the statement prepared on the hearing in relation to vols. 39 to 46, inclusive, by James E. Callaghan, did you not?

A. Yes, sir.

Q. Have you any personal knowledge of the correctness of the figures contained in the statement of George W. Beck or that of James E. Callaghan to which you refer?

A. No personal knowledge of the figures in the statement of George W. Beck in regard to this amount here—this 17 per cent. on the total receipt, I guess it is. I did not figure this statement (indicating).

Q. State what you did in relation to the exhibit prepared by James E. Callaghan in arriving at the 17 per cent.

A. I did not figure this 17 per cent. in any way; we took the 17 per cent. from this statement that was sworn to by Mr. Beck.

Q. Then do I understand you that you figured the 17 per

1471 cent. on the items contained in the third column, "total receipts," of James E. Callaghan's exhibit?

A. Yes, sir; I did.

Q. Was that all you did to compute this 17 per cent. on the total receipts?

A. Yes; that was all.

Q. And the total receipts you took from the statement prepared by James E. Callaghan?
A. Yes, sir.

And thereupon defendants read in evidence the further deposition of James E. Callahan as follows:

SEPTEMBER 17, 1884.

JAMES E. CALLAGHAN, a witness on behalf of defendants, recalled, examined in chief by Mr. HIGH, testifies:

Q. Mr. Callaghan, were you absent in Europe when Mr. Hanlon was examined concerning the sales and cost of producing vols. 39 to 46, inclusive?
A. I was.
Q. When did you return?
A. On the 23d of August.
Q. Look at the statement which you identified in your former examination concerning the sales and cost of production of vols. 39 to 46, inclusive, of vol. 40, and which is marked Defendants' Exhibit 1, and state if you prepared that.
A. I did; yes, sir.
Q. State what the different columns in that statement repre-
1472 sent, beginning at the first.
A. The first column gives the number of the volume, the second the number of copies of each volume sold, the third column the total receipts for each volume sold, the fourth column the average receipt per volume, the fifth column the cost of stereotyping and composition, the next column the cost of paper, the next cost of press-work, the next cost of binding, and the next cost of editorial work, and the next the expense account, and the last column the total cost of the books sold by us.
Q. I observe three other columns on this exhibit. State what they represent.
A. The first of these three columns represents the number of the series, the next the number of copies of each volume printed by us, and the third the number of copies of each volume bound by us.
Q. From what source did you derive the information contained in this exhibit, beginning first with the number of copies sold?
A. The number of copies sold, the total receipts, and the average price per volume I got them from our sales books by the examination of each sale of these volumes made as recorded on our books.
The column covering the cost of stereotyping and composi-
1473 tion, the cost of paper and press-work, and the cost of binding I got from our manufacturing book. The editorial work I got from our accounts. The expense account was taken from the deposition of George W. Beck, and the final column is the summing up.
Q. And from what source did you derive the information?
A. As to the number printed and bound, I got that from our manufacturing book.

Q. Are these sales books and manufacturing books books of original entry in which these transactions were recorded as they occurred?

A. Yes, sir; to all intents and purposes.

Q. I will ask you whether this exhibit is or is not a correct statement of the number of these volumes produced and sold and of the amount received for them and of the cost of their production?

A. As far as I know, sir, it is absolutely correct. There may be some clerical errors, of course.

Q. How much time did you spend on this examination?

A. I couldn't say exactly, but a great deal of time.

Q. It extended over several weeks, did it not, in connection with your other duties?

A. Yes, sir.

Q. And you have submitted to counsel on the other side,
1474 in your former examination, sheets showing in detail the data as to the number of volumes sold and the price received, have you not?

A. Yes, sir; the work of which this is the result.

Q. These 25 sheets produced and submitted under your former examination?

A. Yes; I think that is the number; yes, sir.

Q. Is this exhibit, then, a correct statement of the matters therein set forth?

A. To the best of my knowledge, yes, sir.

Cross-examination by Mr. COTHRAN:

Q. Mr. Callaghan, did you submit to complainant's counsel any statement other than the one now before you showing the basis of the 17 per cent. now excluded?

A. No, sir.

Q. Mr. Callaghan, have you prepared any statement in detail showing the data from which you make up the column "total cost" in that consolidated statement?

A. No, sir; it is merely an addition on that of the columns preceding it—the six columns preceding that of the "total cost."

Q. This column, headed "total cost," is the result of adding together the six preceding columns, is it; adding, respectively, "stereotyping and composition," "paper," "press-work," "binding," "editorial work," and "17 per cent. expense account?"

1475 A. It is the result of adding together the columns headed "stereotyping and composition," "paper," "press-work," "binding," "editorial work," and expense account; yes, sir.

Q. Now, I want to know what you mean by 17 per cent., expense account, and why you included that column in your consolidated statement.

A. My understanding of that is the deposition of George W. Beck shows that it cost us 17 per cent. of our gross sales to carry on our business, and therefore we applied that 17 per cent. to the gross sales of these volumes of the Illinois Reports in question and obtained the column headed "expense account, 17 per cent."

Q. That is, you predicated that column headed "expense account, 17 per cent.," upon the statement made by George W. Beck, do you?

A. Base it on the statement made by George W. Beck; yes, sir; the computation we based on that.

Q. Where is George W. Beck?

A. I suppose he is in the city; he was a few days ago.

Q. Did you make the statement upon which the 17 per cent. was computed as shown by the deposition of George W. Beck?

A. No, sir.

Q. What part, if any, did you take in the preparation of that statement or exhibit to Beck's deposition?

1476 A. As far as my recollection serves me, I had nothing whatever to do with it.

Q. Then have you any personal knowledge of its accuracy?

A. I have not; no, sir.

Q. And in computing this 17 per cent. you have assumed the correctness of his figures?

A. Yes, sir.

Q. I call the attention of the witness to Exhibit A of the deposition of George W. Beck, of which he has made mention, and ask him if he knows, and, if he does, to state, what items constitute the aggregates in the second and third columns of that exhibit.

A. I do not know; I suppose Mr. Beck's testimony shows it.

Q. Then you have no knowledge of your own as to what composes those two columns, have you?

A. No positive knowledge; no, sir.

Q. Have you any personal knowledge?

A. No, sir.

Q. Nor of their accuracy?

A. Nor of their accuracy.

Q. Mr. Callaghan, do you know what was the original cost of the stereotype plates, including composition and stereotyping, of v. 39, Illinois Reports?

A. The cost, including composition, stereotyping, alterations——

Q. I am asking you the original cost—not for alterations.

1477 A. No, sir; I do not. According to Mr. Hanlon's statement, taken from our manufacturing book, the original cost of plates — $361.80, including stereotyping and composition.

Q. Mr. Hanlon has testified that there were subsequent sums paid, as appears by your manufacturing book, for alterations and corrections in v. 39. What do you know about that?

A. I do not know anything about it. I——

Q. Do I understand you that you do not know whether there was any additional sum paid for alterations and corrections in the stereotype plates in v. 39?

A. Yes, sir; there was. I know it from this exhibit, or testimony, rather, of Mr. Hanlon.

Q. Are you able now to state, and, if so, from what source, whether there was any sums paid for alterations or corrections or changes in the stereotype plates of v. 39?

A. Yes, sir; from the manufacture-s' book now produced I find

that on December 17, 1878, we paid for corrections in the plates $178.32; on January 4, 1879, paid for changes in the plates $467.33.

Q. Now, Mr. Callaghan, please explain what you mean by these sums and why they were paid—for what purpose.

A. Well, in this instance, where the corrections amount to so much, that must have been because, for some reason that I do not know, the original plates were destroyed, or portions of them destroyed, necessitating the making of new ones to a great
1478 extent, causing this additional cost.

Q. Do you know the reason why that was done?

A. No, sir; I do not. I was not connected with the business at that time.

Q. Do you know what the alterations or corrections or changes were that were made?

A. No, sir.

Q. Who does know?

A. I do not know that. I was not connected with the firm at all then, and was not thinking about Illinois Reports in those days.

Q. I call your attention to v. 44.

A. Yes, sir.

Q. What sums are charged in your tabulated statement for alterations and changes in the stereotyped plates of v. 44 and under what dates? First state, if you will, the original cost of the stereotyped plates and then the sums paid for changes, if any.

A. According to this book we paid, in February, 1878, for the plates $774.32, and on April 18, 1879, we paid for plates again—changes; that was in parenthesis—$690.12.

Q. Do you know what necessitated the changes or what the changes were?

A. I do not. The same answer that I made to the question as to v. 39 will apply to that, as far as my knowledge is concerned.

Q. Do you know who does know?

A. No, sir.

1478½ Q. Mr. Callaghan, have you had in your possession a transcript made from the books of Messrs. Callaghan & Co. by Messrs. Hawley and Clement?

A. There was such a book that I was looking over before I left for Europe. I put it in the vault, and when asked for it by Judge Cothran to-day I found it in the vault in the same place. I suppose it had been there ever since.

Q. When did you receive it?

A. I do not know the exact date; somewhere in the latter part of May, perhaps.

Q. Did you hear Mr. Clement and Mr. Hawley testify as witnesses?

A. I heard most of their testimony. I guess that is Mr. Clements', not Mr. Hawley's.

Q. You have seen the consolidated statement marked Exhibit A Mr. Clement annexed to his deposition?

A. I think so; yes, sir.

Q. Have you taken the transcript made by Mr. Hawley and Mr.

Clement and compared it with the books of Callaghan & Co. to see whether it is correct or not?

A. No, sir.

Q. Have the defendants taken any means to verify it that you know of?

A. None that I am aware of—that is, to verify it fully.

Q. And it has been in possession of defendants from some time in May until to-day?

A. I suppose so. I found it in the vault where I placed it.

1479 Redirect examination by Mr. HIGH:

Q. Do you remember the circumstance of Mr. Myers sending an expert book-keeper after Mr. Beck had given his deposition as to the expense account for the purpose of verifying the figures as to the expense?

A. I do; yes, sir; I remember such a man coming in there sent by Mr. Myers.

Q. Who was the expert sent, if you remember?

A. His name wa- Blanchard, I think.

Q. Wasn't it Badger, a former banker here?

A. Yes; I believe so.

Q. A. C. Badger?

A. Yes, sir; A. C. Badger.

Q. State, if you know, what was done by Mr. Badger at that time with reference to examining as to the expense and the data from which Mr. Beck had made up his statement of the expense.

A. To the best of my recollection, he went over with Mr. Beck—the source from which Mr. Beck compiled his statement—through the different books in use during the time the statement covered, and, I suppose, verified Mr. Beck's work, so much so that he satisfied himself; at least he so expressed himself before leaving the store.

Q. Just tell what he said, if you know, the substance of it.

A. I cannot tell positively. I have a general recollection of
1480 his being satisfied with the statement as shown by Mr. Beck, and that he so expressed himself before leaving.

Q. You mean that you cannot state the words exactly?

A. No, sir.

Q. You only recollect the substance of what Mr. Badger said?

A. Yes, sir.

Q. I will ask whether all the books and datta were furnished him that covered the account of expense?

A. Ev-rything that was used by Mr. Beck; ev-ry facility was afforded him; Mr. Beck devoted, I think, most of his time while Mr. Badger was making the examination and aided him to make it thoroughly.

Q. Were you present in the counting-room?

A. Perhaps all the time—if not, most of it—while Mr. Badger was there, engaged, however, on other business.

Q. This was done within a few days of Mr. Beck's deposition, was it not?

A. That is my recollection.

Recross-examination by Mr. COTHRAN:

Mr. COTHRAN: I ask to strike out the testimony on the redirect examination as not being pertinent to anything that is called out by the complainant.

Q. Where is Mr. Badger?

1481 A. I do not know; I do not know that I ever saw him before.

Mr. COTHRAN: They should call Mr. Badger.

The COURT: Did he testify in the case before?

A. No, sir.

Counsel for defendants states that he has offered the testimony concerning Mr. Badger's examination for the purpose of showing that the complainant is now estopped from reopening the account of expense.

Mr. HIGH: I now offer in evidence the statement marked Defendant's Exhibit 1, prepared by the defendant, James E. Callaghan, and concerning which he has just testified.

Judge COTHRAN: I object to the statement being in evidence for the reason there is not sufficient proof here upon which the master could find as to the correctness of the column headed "expense account, 17 per cent.," and from the testimony of James E. Callaghan in relation to vols. 39 and 44 the large sums for alterations and changes in the stereotyped plates are not sufficiently accounted for to warrant the master to find that they should be entitled to them as deductions.

I ask further proof before this is received on these heads. The master reserves his opinions until he has further examined

1482 the evidence. It is stipulated that the charge for stereotyping and composition is composed, ⅔ for composition and ⅓ for stereotyping.

Defendants rest.

Adjourned to meet Friday, September 19, 1884, at 10 a. m.

Bennett, 1.

FRIDAY, *September* 19, 1884—10 a. m.

And thereupon the following proceedings were had concerning the further cross-examination of the witness GEORGE W. BECK, who had previously been called as a witness in behalf of defendants:

Parties reappeared before the master.

Whereupon the master said: During the examination of James E. Callaghan, on the 17th inst., I was asked to rule upon two questions, which were then taken under advisement:

First. Complainant's counsel moves to strike out so much of the evidence of the witness Callaghan as relates to the examination made by Mr. Badger of Exhibit A to the evidence of George W. Beck upon a former reference to Mr. Bishop, another master of this court, which evidence was to the effect that said Badger was acting

as an expert of complainant, examined the exhibit as such, and failed to make any objection to it. Counsel for the defendants limits the purpose for which this evidence is offered to that of showing that complainant is estopped from reopening on this reference to me, and attacking the accuracy of that exhibit, limiting the object of the evidence to that purpose. I think it proper to
1483 allow it to remain in the record.

As in my finding upon this question of estoppel I may not give the effect to this evidence contended for by counsel, and the court may be asked to pass upon my ruling, I think it fair to the defendants that the evidence should remain in the record. I therefore overrule the motion of complainant's counsel to strike out this portion of the evidence of the witness Callaghan, reserving the right to give such weight to the evidence as I may think it should have.

Second. Defendants' counsel offered in evidence Exhibit 1 to James E. Callaghan's evidence, including the sixth, seventh, eighth, ninth, tenth, eleventh, and twelfth columns of the exhibit, being "stereotyping and composition," "paper," "press-work," "binding," "editorial work," "expense ac.," and "total costs," respectively. Complainant's counsel objects to the introduction of this exhibit on the ground that no sufficient foundation is laid for it. The evidence relied upon to support this exhibit consists of the evidence of George W. Beck, above referred to (including Exhibit A), and that of James E. Gallaghan and E. J. Hanlon. The evidence of the latter witnesses assumes the accuracy of Exhibit A to Beck's evidence, including the columns headed "general expense," "total ex-
1484 pense," and "expense average." These witnesses do not profess to have personal knowledge upon the subject-matter of these columns, or, in fact, to have other knowledge in respect to them than that derived from the evidence of Mr. Beck. It is contended on the part of the defendants that Exhibit A to Beck's evidence having been taken in the case some years ago, though before another master and on another reference, and the exhibit having been examined and the subject investigated by Mr. Badger at that time, the complainant is estopped from reopening the question and attacking the accuracy of the exhibit, and that it is binding upon the master and court on this reference to me. The former references — *Messrs.* Bishop, master of this court, involved an accounting with respect to other and different reports than these involved in the accounting on this reference. As I am advised, those accountings have advanced no further than to the master's reports on that reference. This accounting with respect to the reports involved here is so far independent of the scope of that reference that I cannot consider mere lapse of time and failure on the part of the complainant to assail Exhibit A to Beck's evidence on that reference and the fact that Badger at the time the reference was pending before Mr. Bishop examined this exhibit and failed to object to it, as
1485 estopping the complainant on this reference from assailing the accuracy of Mr. Beck's evidence, including Exhibit A. Upon looking into Mr. Beck's evidence it will be seen that there was included in the column of "general expenses" the salary, or

what was tantamount to the salary, of four of the defendants' members of the firm of Callaghan & Co., at the rate of $3,000 per annum, and amounting in the aggregate to an average of more than $12,000 per annum. It does not seem to me that defendants, infringing a copyright, have a right to charge and add their salaries, as appears to have been done here, as a part of the cost of production of the articles made in infringement of a complainant's copyright, and, as at present *present* advised, I should exclude those amounts from the cost of production. This exclusion will render the columns of the Beck Exhibit headed "general expense," "total expense," and "expense average" as entirely unreliable as evidence to establish the amounts and percentages claimed to be shown by these columns. The evidence of Mr. Beck, by the terms of the order of reference, as I understand, is to be considered by me on this reference, but, so far as relates to the columns headed "general average," "total expense," and "average expense," is not
1486 so proven that I can assume them to be correct. The columns headed "expense ac." and "total costs" in Exhibit 1 of James E. Callaghan's evidence taken on this reference, being based wholly on those portions of Exhibit A to Beck's evidence, must also be disregarded as evidence in this case, but there is more or less evidence tending to support the other columns contained in Exhibit 1 to James E. Callaghan's evidence, and it will, therefore, be admitted in evidence and given such weight as in the light of the other evidence in the case it may seem to merit, and the objection to defendants' introduction of the exhibit is, therefore, overruled, subject to the views now expressed. Counsel for complainants states that he has no desire to require the production before me of defendants' books or to re-examine them elsewhere upon the question of the general expense of the defendants during the years covered by the manufacture and sale of the reports involved in this reference, but, as I understand, desires the reproduction of Mr. Beck, for the purpose of his further cross-examination in respect to the items making up the several amounts given as the general expense of the defendants, as claimed in Exhibit A to his former evidence. To that extent I can see no objection to the further cross-examination of Mr. Beck. In order that the master and court may see
1487 whether the remaining amounts, making up what is claimed as general expenses, after deducting salaries, should be allowed as general expenses. The amounts making up these expenses should be classified, so far as they are susceptible of it. This cannot be done so far as petty items are concerned, but the aggregate amount of these expenses is large, and it would seem as though the general character and classification of the larger items could be made. In the event of the further examination of Mr. Beck the books of the defendants will not be required to be produced, but the witness must be permitted to refresh his recollection of the items involved in that column of the Beck exhibit designated "general expense" by a reference to the books at the defendants' place of business, should the witness find it necessary to refresh his recollection.

Thereupon counsel for complainant applied for a subpœna for George W. Beck, returnable at 2 o'clock p. m., which was accordingly issued and the further consideration of the case adjourned to that time.

FRIDAY, *September 19th*, 1884—2 p. m.

GEORGE W. BECK, called by complainant for further cross-examination, cross-examined by Judge COTHRAN, testifies:

1488 Mr. High, counsel for defendants, objects to any further cross-examination of the witness Beck as incompetent at this stage of the cause, and because complainant is concluded from any further cross-examination of this witness by reason of the matters hereinbefore set forth, and because the complainant has long acquiessed in the former examination of this witness without objection and without question. The master overrules the objection and states that the witness may be allowed to proceed; to which ruling of the master counsel for the defendants excepts.

Q. Mr. Beck, you were examined before Mr. Bishop, master in chancery on the reference on the original bill in this cause, on March 26th, 1881, and you produced at that time before the master and annexed to your deposition a consolidated statement, marked Exhibit A to deposition of George W. Beck. I now present the original to you from the records and ask you if that was prepared by you.

Mr. High, counsel for defendants, instructs the witness that he is not obliged to answer any further questions on cross-examination without the express order of the court to that effect.

A. I should prefer to have the order of the court——

1489 The master rules that the witness answer the question.

Mr. High, counsel for defendants, instructs the witness that he is not obliged to answer under the ruling if the master or without the express order of one of the judges of this court, and requests the witness not to answer without such order of the court.

Mr. COTHRAN: What is your answer to the question?

A. I shall prefer the order of the court.

Mr. COTHRAN: I ask the master to commit the witness for refusing to obey his instructions.

Q. Mr. Beck, I place before you the original Exhibit A to your deposition of March 26th, 1881, and ask you what items the sum of $31,167.49, under the head of "general expense," was composed?

Mr. High, counsel for defendants, instructs the witness as before.

A. I wish the ruling of the court.

The MASTER: I think he should answer.

Counsel for defendants again instructs the witness that he is not compelled to answer without the order of one of the judges of the court.

Mr. COTHRAN: Do you decline to answer?

A. Yes, sir.

Q. Of what items is the sum of $37,145.99, under the head of "general expense," composed in the same exhibit?

1490 Mr. High, counsel for defendants, instructs the witness that he is not compelled to answer without the order of the court.

The MASTER: I think he should answer the question.

A. I decline to answer the question.

Q. Mr. Beck, in preparing Exhibit A, to which your attention has just been called, did you prepare memorandum from the books of Messrs. Callaghan & Co., and from that memorandum did you make Exhibit A.?

Mr. High, counsel for defendants, repeats his instructions to the witness.

The MASTER: I think he should answer the question.

A. I decline to answer.

Q. If you made memorandum such as is mentioned in the last preceding question where are these memoranda, if you know?

Mr. High, counsel for defendants, instructs the witness as before—that he is not compelled to answer the question without the order of the court.

The MASTER: I think he should answer.

A. I decline to answer.

Mr. COTHRAN: Now, you honor, as the counsel for defendants has declined to comply with your honor's ruling, made this forenoon, that Mr. Beck should be produced for further cross-examination,

1491 and Mr. Beck being present in the court, and the counsel instructing him to refuse to answer questions which are propounded for the purpose of ascertaining the items that are included in the "general expense account," I ask your honor to sustain my objection that the items in the exhibit which was offered in evidence as the basis of the 17 per cent. expense be sustained.

The master rules that the further examination of the witness may be continued until Tuesday of next week, at 10 a. m., in order to give counsel an opportunity to present my rulings to one of the judges of this court, and that the witness reappear before the master at that time, and that unless proceedings be taken modifying or reversing the orders of the master the objection will be sustained as to the column "expense ac." and "total cost" of Exhibit 1, unless the counsel will be allowed to proceed with the cross-examination of George W. Beck. Further taking of evidence is now adjourned until Tuesday morning, at 10 o'clock, September 23, 1884.

The above and foregoing is a true transcript of my rulings as master in the above case, and of the questions of counsel, objections of opposing counsel, and answers of the witness, so far as answers were

1492 made; and I certify that I am of the opinion that my rulings

were correct, and believe that the witness should be required to to submit to the cross-examination as ruled by me.

JOHN I. BENNETT,
Master in Chancery U. S. Court for the Northern District of Illinois.

TUESDAY, *September 23d*, 1884—10 a. m.

Counsel for complainant and defendants appeared in court and report to the master that they submitted the question involved in the refusal of the witness Beck to answer certain questions to Judge Blodgett, and he ruled that the witness should answer.

GEORGE W. BECK, cross-examined by Mr. COTHRAN, testifies:

Q. Mr. Beck, I call your attention to Exhibit A of deposition of George W. Beck filed in this cause in connection with your testimony taken March 26th, 1881, and ask you if you made that exhibit.

Objected to by counsel for defendants.

Counsel for defendants objects to any further cross-examination of the witness on the same ground as heretofore given.

A. Yes, sir.

Q. Please state in what manner you prepared that exhibit.

A. By going through the books of the concern for the various years.

Q. You mean the books of the defendants?

A. Yes, sir.

1493 Q. In going through the books did you make any memorandum or data which you used in compiling this exhibit?

A. Yes, sir.

Q. Where are those memoranda?

A. I don't know; I think I destroyed them after I got through my testimony, but I am not certain.

Q. How long after the 26th of March, 1881, did you remain in the defendants' employ?

A. About three months, I think; I think I left there in July or August; I have forgotten exactly the time.

Q. Did you leave this memorandum with the defendants?

A. If I did not destroy them I left them there.

Q. Do you know whether you destroyed them or not?

A. I do not; I think I did.

Q. Well, thinking a thing is one thing, but do you know?

A. I could not say positively whether I did or not.

Q. What was the occasion of destroying them, if you did destroy them?

A. I did not think they were of any further use.

Q. Were you advised by anybody to destroy them?

A. No, sir; not to my recollection.

Q. Will you swear that you did not leave them with the defendants?

A. No, sir.

Q. Then, is the sum and substance of what you wish to be
1494 understood as saying that you do not know what became of them?

A. Yes, sir; about that.

Q. Can you tell me the items that constituted the sum of $31,167.49 for general expenses in the year 1877?

A. You mean of what they consisted?

Q. Yes, sir.

A. It was made up of salaries paid the members of the firm, expenses for advertising, freight, postage, and all the miscellaneous expenses of running the business.

Q. How much was included in that aggregate sum for advertising?

A. I could not tell you.

Q. Have you any idea on the subject?

A. No, sir.

Q. How much was included in that aggregate item for freights?

A. I don't know.

Q. The amount included for advertising and freights can be shown by the books of defendants, can they?

A. Yes, sir.

Q. And all items which went to make up that aggregate sum can be shown by defendants' books?

A. Yes, sir.

Q. Do the defendants' books also show the items which went to make up the aggregate sums charged in this exhibit for general expenses during the years 1877, '78, '79, and '80?

1495 A. Yes, sir.

Q. Do these books also show the items, which make the aggregate charges for traveling expenses, in this exhibit for each of these years?

A. Yes, sir.

Q. Can you, without these books, give the items either of general expense or traveling expenses in either of these years?

A. I can give you the item of traveling expense.

Q. I mean the items which make up the aggregate?

A. No, sir.

Q. Then you are unable to, as I undstand you, *to* give any further information on the question of general expense and traveling expense during these four years except such as appears by this consolidated statement of yours, called Exhibit A, without further examination of defendants' books?

A. No, sir; I am not.

Q. And that would be true, would it not, of all the different columns contained in this Exhibit A, except the average which was computed upon the other columns?

A. Yes, sir.

Q. Complainant's counsel asks defendants' counsel to produce memoranda made by the witness Beck.

Mr. HIGH: I have asked Mr. Flood, one of the firm, to make diligent search for such memoranda, and he reports to me
1496 that he has done so and cannot find them, and has no recollection of ever seeing them. Mr. Flood is present and can be examined on that point if it is desired.

Mr. COTHRAN: We ask that our objection be sustained to the testimony so far as applies to the percentage of the expense of conducting the business.

Redirect examination by Mr. HIGH:

Q. In making up the statement of expense annexed as an exhibit to your former deposition, please state in detail how you proceeded; what books you examined.

A. I used the cash books, journal, and ledger for the four years this statement consists of.

Q. Is it not a fact that in that examination it was necessary for you to examine each item of the cash expenditure during that period?

A. Yes, sir; I went through the cash books from day to day and checked off any items charged on these separate columns, and anything that belonged to these columns that were credited through the journal in the same way, or rather charged to the expense account through the journal and credited to the various columns; and, after all these items were found, of course I took the balance that was left for the total footing of the expense account for the year, which
1497 made so much a month.

Q. Is it not true that this required an examination of many thousand items?

A. Yes, sir.

Q. How much time did you spend in that examination?

A. I do not recollect how long it took me now.

Q. You were then in the employ of defendants as book-keeper?

A. Yes, sir.

Q. About how much time, as you recollect, in connection with your other duties?

A. I do not remember, really, how long it took; I have no recollection of it at all.

Q. Considerable time, did it not?

A. Yes, sir; quite a time. I worked nights on it; nights principally, as a matter of fact.

Q. You are not now in the employ of the defendants?

A. No, sir.

Q. In what business are you engaged?

A. Expert accountant.

Q. And your best recollection is, as I understand, that these memoranda were destroyed by you soon after your former examination?

A. That is the best of my recollection. I am almost positive that I destroyed them.

Q. Do you remember the fact that Mr. Badger was sent by Mr. Myers to investigate this expense account soon after you made up your statement?

1498 A. Yes, sir.

Q. Have you any recollection as to whether you submitted these memoranda to him at that time?

A. My recollection is that when Mr. Badger came in there I showed him the memoranda I had, from which I made this statement up, in order to show him how I got at the various sums, and then he and I went through two months of the books, skipping a month here and there, to see if it came anywhere near what my memoranda showed, and he said he was perfectly satisfied.

Q. Did you give him all the information he desired?

A. Yes, sir.

Q. Did you afford him access to the books and papers?

A. Yes, sir; anything that he asked.

Q. What, if anything, did he say when he got through?

A. He said he was quite well satisfied—perfectly satisfied.

Mr. COTHRAN: We object to the witness stating what Mr. Badger said. He is not a party to the suit.

Q. In what shape were those memoranda, as you recollet—in what form?

A. I think they were loose sheets of paper.

Q. In pencil or ink?

A. Pencil.

1499 Mr. COTHRAN: How many books did you examine before making up the statement for these four years?

A. I don't remember that.

Q. Have you any idea on the subject, sir?

A. Well, there would be probably about two cash books in a year—eight or nine cash books—and I should think probably a couple of journals. I am guessing at that, you know; I have forgotten.

Q. How long was Mr. Badger in the defendants' store on the occasion you speak of?

A. I don't remember now.

Q. Was he there on more than one occasion?

A. I think he came in twice, but I am not positive now.

Q. Twice, when he made any examination, or once?

A. Yes, sir; twice. I think my recollection is that he came back a second time for the purpose—for some special point he wanted to find. I am rather hazy on that.

Q. On what kind of paper did you make these memoranda that you refer to—note paper, letter paper, or cap paper?

A. I think it was on letter-head paper.

Q. About how many sheets were there?

A. I don't remember.

Q. Have you any idea?

A. No, sir.

Q. Did the defendants, during these four years, have an annual adjustment of accounts or make any dividend of the

1500 amount belonging to each—the profit—or did they draw out as much as they desired from time to time during the year?

A. Yes, sir; that is the way.
Q. As they drew it out it was charged to them in their account?
A. Yes, sir.
Q. And when you made this statement which you call "salaries" did you mean by that the aggregate sum that each of the partners drew out during the year?
A. No, sir.
Q. What do you mean by that?
A. I mean the amount which was credited to each of the members of the firm for salaries due during the year.
Q. Was that under any agreement in the articles of partnership?
A I believe so.
Q. Well, have you seen the articles?
A. No, sir.
Q. Why do you say you believe so?
A. I can hardly tell you that; general impression, I guess.

Mr. HIGH: Were you not instructed by the members of the firm that they were entitled to these amounts of salaries annually?

A. I was going to say——

Mr. COTHRAN: I object to proving their own instructions to the witness.

1501 The WITNESS: I was going to say that my recollection is that I was instructed by one of the members of the firm that they were to draw so much during the year.
Q. And those are at the rates given in your exhibit?
A. Yes, sir.
Q. Do you include anything in those salaries as presented in your exhibit of salaries over and above the annual sum that you were instructed they were entitled to as salaries?
A. I do not understand the question, Mr. High.
Q. If, for example, there was an overdraft by any member of the firm above the amount you understood they were entitled to as salaries, did you include that overdraft in the salaries?
A. No, sir. This salary item here shows simply what each member of the firm was to draw, and that was credited to his account every year.
Q. Was it done monthly?
A. Either monthly or—I think it was monthly.
Q. $250 a month, was it not?
A. Yes, sir.
Q. Except in one or two instances, when Andrew Callaghan drew more?
A. Yes, sir.
Q. Now, isn't it a fact that at times some of the members
1502 of the firm made overdrafts in excess of their salaries?
A. Yes, sir.
Q. How was that charged on the book?
A. That was charged to their account as an overdraft.
Q. And do these overdrafts appear in that exhibit of salaries?

A. No, sir.

Q. Then, if I understand you, your exhibit of salaries is limited to the annual salaries drawn, as you understood, for the services of the members of the firm at that time?

A. Yes, sir.

Mr. COTHRAN: By the term salary do you mean to convey the idea of the sum each was to draw out during the year?

A. Yes, sir; as payment for services for the time spent in the business.

Q. Well, it could not be for anything else, could it?

A. I suppose not.

Mr. HIGH: There was never any division of profits among the members of the firm while you were there?

A. Not that I recollect of.

Q. And you had charge of the books during how long a period?

A. I think it was in May, 1880, that I took the ledger, and that would be from May to—about fifteen months, I think.

Mr. COTHRAN: And then you were not book-keeper during the years 1877, '78, and '79?

1503 A. No, sir.

Q. Then have you any knowledge about this question of salaries for these years, other than what appears in the books?

A. Yes, sir.

Q. How did you derive that knowledge?

A. From one of the members of the firm.

Q. A mere declaration of one of the members of the firm?

A. A statement made to me privately as to what each member of the firm was to draw.

Q. And that is all the knowledge you have on the subject during the years 1877, '78, and '79, and down to the time of '80 when you went in?

A. Yes, sir.

Q. Who was your predecessor as book-beeper?

A. Mr. Cole.

Q. What is his Christian name?

A. I don't know; W. W. are his initials. What the first W. stands for I don't know.

Q. Where is he?

A. In Colorado, I think, the last time I heard of him.

Q. Well, then, Mr. Beck, you have no personal knowledge, as I understand from your testimony, of any of the items which are included in any of the columns of this Exhibit A, except from May, 1880?

A. Yes; there were some days and sometimes two or three weeks at a time during those years I kept the books while the book-

1504 keeper was away.

Q. At intervals during that time you assisted the book-keeper?

A. I kept the books while he was away; I never assisted him.

Q. Wasn't that assisting him in his business?

A. You might put it that way.

Q. With the exception of those intervals and from May, 1880, have you any knowledge of the correctness of the items which constitute these aggregates in Exhibit A than the entries on the books?

A. No, sir.

Q. Mr. Beck, how long would it take you to run through those books and make up the data to verify these aggregates of Exhibit A?

A. Probably about a week or ten days; possibly two weeks.

Q. From the books you could show the amount of freight and advertising entered into these items?

A. Yes, sir.

Q And the other items which constitute the aggregate?

A. Yes, sir.

Mr. HIGH: These cash books were books of original entry, were they not?

A. Yes, sir.

Q. You had been with the firm four or five years before you became book-keeper?

A. Yes; for nearly six years.

1505 Mr. COTHRAN: We insist on our objection to this Exhibit A as not being evidence and as not being sufficiently proven to warrant the master in finding on the percentage. If they have not the data they must make new data or produce the books in court.

The MASTER: It would seem to me to be the better course to admit the exhibits subject to whatever objection may be urged against them on the final hearing, and give them such weight as I may conclude they deserve, or no weight at all, rather than exclude them. It is a mere question of practice, and I would prefer to reserve, so far as possible, the findings upon the facts until I come to make up my final report, when I shall pass upon the questions which are deemed material by counsel, so as to give both parties a fair opportunity to question the correctness of my rulings. I have already expressed my views with reference to these exhibits. The further evidence which has been taken to-day does not materially change the facts as bearing upon this question and has not changed my views. According to Exhibit 1 to James E. Callaghan's evidence the total cost of the publication of these volumes is $13,514.36, and the total receipts $8,648.97, thus showing a loss to the defendants in the publication and sale of these volumes of nearly $5,000. I can

1506 only account for that result upon the hypothesis that the figures claimed in the column headed "general expense" in Exhibit A to Beck's evidence cannot be relied upon as true, either on account of some mistake in their compilation or upon their including amounts which do not properly belong there. As Exhibit 1 to Callaghan's evidence is based upon these figures it follows, as I have before stated, that the columns "total expense" and "percentage" cannot be treated as proving these amounts as correct. I have deemed it fair to counsel, as this has seemed to be an important question in the case, to indicate in advance my views upon it, and it must be left to them to determine what further evidence, if any,

they will put in the case. I therefore overrule the motion to exclude Exhibit A, subject to these views and the objection of counsel to be urged and considered on the final hearing.

Defendants rest.

And thereupon complainant read in evidence the deposition of Bernard Callaghan as follows:

SEPTEMBER 23, 1884.

BERNARD CALLAGHAN, one of the defendants in this case, called in rebuttal, examined by Mr. COTHRAN, testifies as follows:

Q. Mr. Callaghan, when did you become a member of the firm of Callaghan & Co.?

A. I was one of the original founders of the house when it was under a different name—Callaghan & Cutler, and subse-
1507 quently Callaghan & Cockroft, and later still Callaghan & Co.

Q. When was the firm of Callaghan & Co. organized?

A. I think the first of January, 1872; immediately after the Chicago fire, or soon after.

Q. Who then composed the firm?

A. Myself and Andrew P. Callaghan.

Q. Who composed the firm of Callaghan & Co., commencing with the year 1877?

A. I do not recollect now, exactly, the changes that the firm underwent. I think it was composed then of myself, Andrew P. Callaghan, and Andrew Callaghan, my brother, and Sheridan A. Clark. That is my recollection.

Q. And subsequently Mr. Flood came into the firm?

A. Yes, sir.

Q. Have you written articles of partnership?

A. We have.

Q. During the years 1877, '78, '79, and '80?

A. Yes, sir.

Q. Will you be kind enough to produce them for the impection of the master and myself in the presence of your own counsel?

A. Yes, sir; I will do so.

Adjourned to Wednesday, September 24, 1884, at 2 o'clock p. m.

WEDNESDAY, *September 24th*, 1884.

Met, pursuant to adjournment, Wednesday, Sept. 24th, 1884, at 2 p. m.

Examination of BERNARD CALLAGHAN continued.

Examined by Judge COTHRAN:

1508 Q. Have you the articles of partnership that I called for here?

A. I have; yes, sir.

Q. What is the date of the articles of partnership?

A. The first day of July, 1875.

Q. The members of the firm, as shown by these articles, are whom?

A. Myself, A. P. Callaghan, Andrew Callaghan, and Sheldon A. Clark.

Q. What is the provision in these articles of partnership in relation to the sum of money that the different partners may draw out? Will you please read it?

A. (Witness reading.) "Each of said Callaghans shall be entitled to draw out of the business for his personal expense and support the sum of two hundred and fifty dollars ($250) monthly and no more, and the said Clark the sum of two hundred and eight dollars and thirty-three cents ($208.33) monthly and no more."

Q. Now, then, how long did these articles of partnership remain in force?

A. They remained in force until the first day of July, 1879.

Q. At that time were new articles of partnership drawn up?

A. Yes, sir; there were.

Q. And who then constituted the firm?

A. The same members, with the addition of Thos. H. Flood.

Q. What provision was there in the new articles of parter-
1509 ship in relation to the sums that might be drawn out by the partners?

A. (Witness reading:) "During the continuance of the copartnership each of the parties hereto shall be entitled to draw from the firm for his own expense and support the following sums and no more: The said Andrew P. Callaghan the sum of four thousand dollars ($4,000) and each of the other partners the sum of three thousand dollars ($3,000), such sums to be drawn in monthly installments."

Q. And these articles of partnership remained in force during the time of the reprint and sale of these books?

A. Yes, sir; I think it was in 1882 the next change was; I think they remained in force until—well, until the present firm was organized, until A. P. went out.

Q. And a somewhat similar provision is contained in the articles made in 1882?

A. Yes, sir.

Q. Mr. Callaghan, from the testimony of your present book-keeper, Mr. Hanlon, it appears that on July 31, 1878, you paid for composition and stereotyping $661.80 for volume 39, and he further states that December 17, 1878, was paid for corrections $178.32; on January 4, 1879, for changes, $467.33; will you please explain the necessity for this large expenditure in changes and why it was done?

A. I do not know.

1510 Q. Mr. Hanlon also states that for volume 44 the original composition and stereotype plates cost $774.32, and that for changes was paid, April 18, 1879, $690.12; what was the occasion of the change and the necessity for this expenditure?

A. I do not know.

Q. Who of your firm does know?

A. I think Mr. Flood or A. P. Callaghan would be the parties to know that.

Q. Now, it would appear, Mr. Callaghan, that to vol. 45 there was almost an entire reprint and restereotyping; was there two editions of vol. 45 printed?

A. I do not think there was; I do not know; I didn't attend to the manufacturing at all; in fact, I had nothing to do with the manufacturing then; I didn't look into it and did not desire to.

Q. Who can answer me the question whether there was two editions printed?

A. I think Mr. Flood was attending to the manufacturing then; I am not entirely sure of it.

Q. Mr. Callaghan, can you tell from the quantity of paper used the number of copies of a volume printed?

A. No, sir; I cannot.

Mr. HIGH: Isn't it a fact that after the first articles of copartnership which you have produced and about the year 1876 or '77 the salary of A. P. Callaghan was increased to $4,000 by mutual consent of the partners?

1511 A. I have no recollection of the time.

Q. It was so increased?

A. It was so increased because he claimed he was rendering extra service; that he worked nights and Sundays occasionally and did a good deal of work—more than the rest of us; and he claimed more salary, and we agreed to it.

Q. That was before Mr. Flood came in, was it not?

A. I think before Mr. Flood came in, but I am not sure of that.

Q. About what year was that—1876 or '77?

A. I would not venture to say, because I am very much mixed on it. When it was I think the books would show that, when he began to be credited with the increased sum per month.

Q. And the book-keeper was then instructed to credit him with the increased sum, was he not?

A. Yes, sir.

Q. When the new arrangement was made?

A. Yes, sir.

Q. What is the fact as to whether the members of the firm under both these articles of copartnership during the time in question devoted their time to the business—devoted their time or engaged in outside business?

A. They devoted all their time to it.

Q. All of them?

1512 A. Yes, sir. I do not mean to say that we didn't have our vacations like all ordinary business men have.

Q. But they devoted their entire business time?

A. Our entire business time.

Q. Were you engaged in any other business enterprise?

A. No, sir.

Q. How long have you been engaged in the law-book business—how many years, and in what capacities?

A. I have been engaged in it more than thirty years, and more

than twenty years in business for myself, and in the neighborhood of thirteen years as an employee of Little, Brown & Co., making about thirty-three years in all.

Q. Are you familiar with what would be a reasonable and fair compensation for services such as those rendered by the members of your firm during this period?

Mr. COTHRAN: I object to the evidence on the ground that it is an attempt to prove his original case.

A. Well, I can't say I am very familiar with it.

Q. What salary did you receive during your employment by Little, Brown & Co. before you entered into business for yourself?

Mr. COTHRAN: Objected to as being entirely incompetent.

1513 A. Salaries were much smaller then than they have been since. My impression is that my last salary was a fraction over $2,800; that was more than twenty years ago.

Q. Are not salaries in the law-book business largely increased since that time?

A. Yes, sir.

Q. In your judgment, would the amounts that were drawn by the partners as salaries during this period be a reasonable compensation for their services as rendered?

A. I think they were reasonable for the services rendered.

Mr. COTHRAN: Mr. Callaghan, did your firm make a contract with Norman L. Freeman, the reporter of the Illinois Reports, for the purchase of copies of volume 47 onwards about the 10th of March, 1877?

A. My recollection is we made an arrangement with him; what shape it was in I do not remember.

Q. Was it a written contract?

A. I do not know.

Q. At what price was he to furnish you the Illinois Reports, commencing with 47 on?

A. I think $2.50 per volume.

Q. At that time the retail price was $3.50 per volume?

A. That is my recollection.

Q. That is from 47 on?

A. To 80, except two volumes, 73 and 74.

1514 Q. They had not come out yet, had they?

A. I think not.

And thereupon complainant read in evidence the deposition of James E. Callahan as follows:

SEPTEMBER 24, 1884.

JAMES E. CALLAGHAN called, examined by Mr. COTHRAN, testified as follows:

Q. In Exhibit 1 to your deposition there is a column marked "No. printed." Will you tell me where you got the information of the number printed as given in that column?

A. My impression is I got it from this manufacturers' book (indicating)

Q. Will you turn to the manufacturing book and see how many were printed of volume 41?

A. 338, I think it is.

Q. How did you arrive at that number?

A. By adding together the number of sheets sent to the store-room and the number of copies bound by the time the book was first issued; 345, I think it is, in place of 338; it is seven more.

Q. Was there any statement in the manufacturing book of the number printed of volume 41?

A. There is not; no, sir; not now.

Q. Look as to volume-. 39, 42, 43, 44, 45, and 46 and see if the number is not given as printed of each of these volumes.

A. Yes, sir.

Q. How do you account for the fact that the number printed of volume 41 is not also given?

1515 A. I cannot account for it, except that it is an oversight on the part of the man that entered up the first bills.

Q. Can you tell from the quantity of paper used the number of volumes to be produced?

A. As given in this paper?

Q. As given in your statement.

A. No; sir.

Q. Then have you any mode of telling the number of copies of vol. 41 that were actually printed?

A. Yes, sir.

Q. Well, how do you arrive at it?

A. By taking the number of copies that were bound and adding to those we now have in sheets would give it.

Q. That is all the way you can arrive at it?

A. That is the only way, sir, correctly; it can be told approximately.

Q. The number given as printed of vol. 41 is much less than that of any other volume, is it not?

A. Yes, sir.

Q. And yet in the cost of the press-work of volumes 41, 42, and 43 the difference is about $1.00 in favor of vol. 41?

A. Yes, sir.

Q. And in volumes 39 and 46 there is a difference of $2.00?

A. Difference between 39 and 46?

Q. The difference between 39, 46, and 41.

A. Two dollars—yes, sir.

1516 Mr. HIGH: Did you give the best and fullest information possible from your books as to the number of copies of vol. 41 that were printed?

A. Yes, sir.

Q. What is the practice with your printers as to paying them for printing reports—for example, where they either exceed or fall short of the number contracted for?

Mr. COTHRAN: Objected to as incompetent for any purpose of the case.

A. If they do not fall too far short or are not too far over, the payment is the same. We contract for a given edition, and if it runs 50 or 60 less or 50 or 60 more, as a rule there is no difference in the charge for the press-work.

Q. You pay the same price as fixed by the contract?

A. Yes, sir.

Q. And you are not able to give exactly from the books the number of copies of vol. 41 printed any nearer than you have?

A. No, sir.

And thereupon complainant read in evidence the deposition of J. A. Burhans as follows:

SEPTEMBER 24, 1884.

J. A. BURHANS, a witness called on behalf of complainant, being duly sworn, examined in chief by Mr. COTHRAN, testified as follows:

Q. Where do you reside?

A. In Chicago.

Q. What is your business?

1517 A. Lawyer.

Q. Did you purchase a set of Illinois Reports from Messrs. Callaghan & Co.?

A. Yes, sir.

Q. When?

A. In December, 1880.

Q. How many volumes?

A. Ninety-five, I think.

Q. At what price?

A. Well, the set of reports was put in with other books at an aggregate price. I think a set of Washburn, three volumes; Parsons on Bills and Notes, two volumes; Freeman on Judgments, one volume, were put with the 95 reports at $360.

Q. Were they new.

A. These reports?

Q. Yes, sir.

A. Most of them were; part were second hand.

Q. Which volumes were second hand?

A. It is impossible now for me to tell.

Q. Did you look at them to-day?

A. Yes, sir.

Q. What second-hand volumes did you find to-day?

A. I confess I do not remember the volumes.

Q. Were they in the 70's?

A. I think they were. I will say about the second-hand volumes it is impossible for me to tell now. I made no note of it at the time—that is, at the time I purchased them—and now it is im-

1518 possible to tell whether they were second-hand or shelf-worn at that time or not.

Q. Did you look at volumes 32 to 46 to see whose edition they were?

A. No, sir; I do not think I did.

Q. Was your attention called to them to-day.

A. Yes, sir. Well, I do not know as to those particular volumes; those up to 40; as I remember, my attention was called to from about 30 to 40; possibly 46, though.

Q. Who was the publisher?

A. Callaghan & Co., I think.

Cross-examination by Mr. HIGH:

Q. It is utterly impossibly for you now to tell which were original and which second hand?

A. Yes, sir; at this date.

And thereupon complainant read in evidence the deposition of E. B. Myers as follows?

SEPTEMBER 24, 1884.

E. B. MYERS, complainant in this case, called in rebuttal, examined by Mr. COTHRAN, testified as follows:

Q. Were you acquainted with Andrew P. Callaghan, one of the defendants?

A. Yes, sir.

Q. Did you have any conversation with him in relation to the purchase of a quantity of Illinois Reports from Gilbert, of St. Louis?

A. Yes, sir.

Q. About when was that?

A. In the winter of 1876.

Q. In the city of Chicago?

A. Yes, sir; in my place of business.

1519 Q. State what it was.

Mr. HIGH: Objected to as incompetent, immaterial, and not legitimate rebuttal.

A. At the time he called upon me in regard to the republication of the volumes out of print he said that he had purchased the balance of the edition of volumes 2 to 18, inclusive, and the control of some subsequent volumes.

Q. Did he state how many copies of the different volumes he purchased?

A. Not as I remember, exactly, but between 400 and 500 sets, and got a lot of odd volumes.

Q. Well, what was said as to the price?

A. Well, I quizzed him about the price that he paid for them, because I had formerly been negotiating for the same volumes myself; or, rather, the party who owned them had endeavored to sell them to me.

Q. State what was said as to the price.

A. They were offered to me by Mr. Gilbert at $1.00 a volume for the unbound volumes and $1.25 a volume for the bound volumes,

of which there were, as I recollect, perhaps a couple of hundred volumes; perhaps a few more. He said to me during this conversation, while talking about it, that he did not pay as much as that for them.

Q. That is, Andrew P. Callaghan?

1520 A. That was what Mr. Callaghan said to me; yes, sir. I had told him the price they had been offered to me. He did not tell me how much he had paid for them, but less than that.

Q. And the price you stated is the price you have just given?

A. Yes, sir.

Q. Mr Myers, did you in connection with Mr. Clement compile from his transcript of sales taken from defendants' books a statement of the copies of volumes 39 to 46, which were omitted in the transcript made by James E. Callaghan and furnished to the court here?

A. I did; in comparing the statement furnished by Mr. Callaghan——

Q. In preparing this table did you take Mr. James E. Callaghan's transcript and the transcript made by Messrs. Hawley & Clement and ascertain by comparing them the volumes that Mr. Callaghan omitted in his transcript?

A. I did.

Q. Does the table that you have made give the names of the purchasers and the date of the purchase of the different volumes and price, and the number of the volume and page in Mr. Callaghan's journal, where the sales are shown?

A. It does, with the exception in some cases of the price.

Q. Have you your table here that you made?

1521 A. I have.

Q. Is this it (indicating)?

A. Yes, sir.

Q. Take vol. 39. How many copies of volume 39 did Mr. James E. Callaghan omit in his transcript and in his compiled statement?

Objected to as incompetent and irrelevant and not legitimate rebuttal.

Q. How many copies of volume 39 were omitted by James E. Callaghan in his statement?

A. Thirty-two.

Q. Go on with the different volumes and give the number of copies omitted.

Objected to as incompetent, irrelevant, and not legitimate rebuttal.

A. Volume 41, 46 copies; volume 42, 31 copies; volume 43, 66 copies; volume 44, 47 copies; volume 45, 28 copies; volume 46, 33 copies.

Q. Making an aggregate of how many volumes?

A. 283.

Q. Mr. Myers, have you footed up the number of copies of vols. 39 to 46, inclusive, excluding volume 40, that James E. Callaghan says they had bound?

A. I have.
Q. How many have you?

Objected to as incompetent, irrelevant, and not legitimate rebuttal.

A. 2,454.

Q. Deduct from 2,454 1,990, which he gives as the num-
1522 ber of copies sold, and see how many volumes bound it would leave on hand?
A. It would leave 464 copies.
Q. How many copies are on hand bound, as shown by the statement made by Mr. Clement, after the counting?

Counsel for defendants enters one general objection to any and all further testimony by this witness in the way of comment or criticism on the testimony of previous witnesses.

A. The number on hand of the bound copies is 166.
Q. Making a difference between the number that should be on hand and those actually on hand — how many?
A. Two hundred and ninety-eight copies.
Q. My. Myers, have you compiled from a transcript that was made by Messrs. Hawley & Clement, with the assistance of Mr. Clement, the number of copies of these different volumes that were sold and the different years in which sold?
A. I have.
Q. Have you put it in a tabular form?
A. Yes, sir.
Q. Is that it (indicating)?
A. Yes, sir.
Q. Will you annex it to your deposition as a part of it?
A. Yes, sir.

Objected to as incompetent and as not proper rebuttal.

1523 (Statement marked Exhibit B to E. B. Myers' Deposition.)

Q. Does that show that statement correctly, the number of copies of volumes 39 to 46 that were sold, and the year in which they were sold?
A. It does.
Q. Mr. Myers, in the transcript that was made by Messrs. Hawley & Clement from the defendants' books are cases where sets and part of sets of Illinois Reports were sold where they are marked second hand and some part second hand?
A. Yes, sir; I observed a number of them.
Q. Have you gone to the purchaser in any instance to examine the books that were so marked?
A. I have in a few instances, where convenient.
Q. State the cases that you have examined and what you found.
A. Set sold to Mr. C. H. Crawford, marked second hand, contains vols. 32 to 46 of the reprints, apparently new; no marks or anything about them to indicate that they were second hand. Another

set to W. J. Manning, second hand, which contained vols. 2 to 18, second hand; vols. 39 to 46, except 40, apparently new; could find no indication of having been anything but new books.

Q. Whose edition were these?

A. All reprints by Callaghan & Co. I will state that vol-
1524 ume 40 is excepted in Mr. Cranford's set. Bacon & Danforth set, entered as part second hand, contains a number of second-hand —, but not of reprints of 39 to 46, except 40.

Q. Did that set contain vols. 39 to 46, except vol. 40?

A. It did.

Q. Of the Callaghan edition?

A. Yes, sir.

Q. Were they new or second hand?

A. Apparently new. Mr. R. W. Clifford, second hand, 39 to 46, except 40, apparently new books.

Q. What edition?

A. Callaghan & Co.'s edition, reprints.

Q. And that set was marked second hand in their books?

A. Yes, sir.

Q. Go on.

A. J. A. Burhan's set, marked part second hand in the transcript, found to be all new books prior to about the 70th volume; discovered about three or four volumes in the 70's apparently second hand, although very nice copies.

Q. When did you see that set last?

A. This morning; also saw it a long time ago.

Q. Well, volumes 39 to 46 were of what edition?

A. Callaghan's edition, except volume 40. Mr. Byron Bacon, set entered second hand, 39 to 46, except 40, of the Callaghan edition, apparently new books. S. H. Kerfoot, second hand, which apparently are all second hand.

1525 Q. What edition?

A. The Callaghan edition of 39 to 46, excluding 40, W. S. Ellis, entered "good second hand," and I found them to be second hand, in good order.

Q. Of whose edition were vols. 39 to 46?

A. I do not recollect whether they were of Callaghan's edition or not. I noticed one or two of them. I was in some haste and did not note it down. Eugene Ehrlick, entered as good second hand, contains all the reprints except vol. 40, and is apparently a second-hand set, having had Mr. M. D. Ewell's name on it.

Q. There are cases that you found right here in the city?

A. Yes, sir. I could give the dates, book, and page by taking more time to examine the transcript. In taking off the names I did not put down the book and page.

Q. These are actual sales as shown by the transcript?

A. These are actual sales as shown by the transcript.

Q. Is this the list of books omitted by James E. Callaghan in his transcript that you have spoken of in your testimony to-day?

A. It is the one prepared by Mr. Clement and myself.

Mr. COTHRAN: I produce the list for the use of the master and counsel.

1526 Mr. HIGH: Merely for the purpose of reference, I suppose?
Mr. COTHRAN: Exactly; the same as the transcript used.
Cross-examination by Mr. HIGH:

Q. In your testimony which is given as to what you claim to be discrepencies and mistakes in the statement of James E. Callaghan as to the number of volumes sold down to what date did you bring the sales of these volumes from Clement's sheets?

A. To the end of the transcript, which I think was——

Q. In April of this year, was it not?

A. April, if I recollect right.

Q. You simply went over the same ground as Clement did, assuming his work to be correct?

A. Yes, sir.

Q. Bringing it down to the end of his transcript, which was about the month of April last, was it not?

A. Yes, sir.

Q. So that you included all sales up to that time from the beginning of the sales of these volumes?

A. Yes, sir.

Q. You do not attempt to say positively whether these copies that you examined in the offices of various attorneys, of which you have just testified, were new or second hand. You only speak from a large experience in dealing with law books, do you not?

1527 A. Well, from my experience dealing in law books, both new and second hand, it is my judgment.

Q. But you do not give it as a positive fact?

A. I do not think there is any doubt about it. There were no indications of having ever been used; no names inside or dates; bright, clean titles, clean sheets, good sheepskin.

Q. But you are simply speaking of their appearance, with no knowledge as to the fact?

A. That is all.

Adjourned to Saturday, October 4th, 1884, at 10 a. m..

And thereupon defendants read in evidence the further deposition of Thomas H. Flood as follows:

SATURDAY, *Oct. 4th*, 1884.

Met, pursuant to adjournment, October 4th, 1884, 10 a. m.

THOMAS H. FLOOD recalled, examined by Mr. HIGH, testified as follows:

Q. Mr. Flood, what are the actual facts, if you know, about the sale of a set of Illinois Reports by the defendants to Bacon & Danforth, of which Mr. Myers testified a few days ago?

A. The set was sold by myself to Mr. Danforth for the firm of Bacon & Danforth.

Q. When?

A. In 1882; in May, 1882. They were bought by Mr. Danforth and belonged to Bacon & Danforth. Some months later Mr. Danforth came to the store and said he had changed or was about to change location and wanted us to buy his books. A few days later he came in with his partner and said there had been some
1528 misunderstanding and he would like to have Mr. Bacon repurchase them from us, and I told him, certainly; we would be happy to sell to him.

Q. I only asked as to the actual fact.

A. The same set was sold to Bacon, Byron & Bacon—of which Mr. Myers testified—the identical set.

Q. Give the date of the sale to Byron & Bacon.

A. February 19, 1883.

Q. In what condition was that set when first sold to Bacon & Danforth—new or second hand?

A. Second hand.

Q. Including vols. 39 to 46?

A. Yes, sir.

Q. You mean to be understood, then, that both sales were of second-hand volumes of 39 to 46?

A. Second hand; the second—the sale to Byron & Bacon—was the identical—the same as sold to Bacon & Danforth.

Q. Was vol. 40 included in that set?

A. It was not included; no, sir; and it was some other volume short.

Q. You are positive that it was a second-hand set when first sold to Bacon & Danforth?

A. Yes, sir.

Q. What are the facts about the sale of a set to R. W. Clifford, of which Mr. Myers testified?

A. The sale of the set to Clifford was made something about a year ago, in September, 1883—I think September, 1883; was a set of books purchased from Mr. Kirkpatrick, of the firm of Lyon
1529 & Kirkpatrick, of Owasso, Michigan, sold originally by us to the firm, and we purchased and received them in the store a day or two before the purchase of and sale to Mr. Clifford.

Q. About when was the sale to Lyon & Kirkpatrick?

A. The best of my recollection is they had been in their possession about three years; I am not sure, though, as to the time; it might have been four or five.

Q. Were these volumes, 39 to 46, as sold to R. W. Clifford the identical volumes you repurchased from Lyon & Kirkpatrick?

A. Yes, sir; the same; two or three volumes in 100; three, four, or five added; something of that sort; five or six.

Q. Was volume 40 in that set?

A. Yes, sir.

Q. Whose edition?

A. Myers' edition.

Q. What are the facts about the sale of a set to W. S. Ellis, of which Mr. Myers testified recently?

A. That was a sale made by myself to Mr. Ellis—the sale of a

part of a set, from 37 up, second hand, of the volumes in question; of vols. 39 to 46; 45 only is the reprint edition, and that is very much worn and has the name on the outside; the others are the original edition.

Q. Then vols. 39 to 46 in the set sold to Ellis, exclusive of volume 45, were of Myers' own edition?

1530 A. Yes, sir.

Q. Have you examined them recently to make sure of that fact?

A. I have.

Q. When?

A. Wednesday of this week, I think.

Q. And these sales that you have now enumerated, I understand, you testify to of your own knowledge; is that a fact?

A. Yes, sir.

Q. As to the sale to C. H. Crawford and Mr. W. J. Manning, of which Mr. Myers testified, what are the facts as to whether they were original or second hand?

A. The entries are second hand—stated as second-hand sets.

Q. Have you any personal knowledge as to whether they were new or second hand?

A. I have not—more than selling the set to Mr. Crawford, I think in 1879. It was some time ago, and, of course, I cannot at so late a date tell very much about the circumstances—no more than it is our custom; it was sold as second hand and was entered as second hand at the time.

Q. What is the custom of the firm in selling second-hand sets, as to entering it on the sales book?

A. The entry is invariably made second hand or part second hand. The volumes that are second hand and those that are

1531 new are never enumerated. It is not customary with the trade.

And thereupon complainant read in evidence the deposition of Alpheus C. Badger as follows:

OCTOBER 4, 1884.

ALPHEUS C. BADGER, witness called an behalf of complainant, being duly sworn, examined in chief by Mr. COTHRAN, testifies:

Q. State your residence and occupation.

A. My residence is Chicago; occupation, accountant.

Q. Were you called upon some time in the year 1881 by Mr. Myers to go to Mr. Callaghan's store in relation to making some examination of their books?

A. I was; some time since, and possibly that year. I do not remember the exact date.

Q. I call the witness' attention to Exhibit A annexed to George W. Beck's deposition, under date of March 26th, 1881, and ask the witness, Did you ever see that exhibit before?

A. I have no recollection of ever seeing it.

Q. Were you when you went to Mr. Callaghan's requested by Mr. Myers to make investigation as to certain items that he supposed might appear in their books for expense made at Madison, Wisconsin?

A. No, sir; I was not.

Q. Did you go to Messrs. Callaghans' store to look at their books?

A. I did.

Q. How long were you there?

1532 A. My best recollection would be that I went there once to make arrangement with some gentleman in the store to go there at some subsequent time, which I did. Whether I went more than once I do not remember, to examine the books. I met a gentleman there who I supposed had charge of the books. He showed them to me as he was called upon, but my instructions were to look generally over the accounts to see if there was anything in the shape of any large items that would attract my special attention as expense, and that is all I did look for. I should suppose, as my best recollection, that I might have been there a couple of hours; possibly three hours. Of course, the exact time it would be impossible for me to state.

Q. It would have been impossible to make a thorough examina- of the expenses running over three or four years in that short time?

A. I was not to make a thorough examination. I understood at first I was to make a thorough examination, but afterwards my instructions were, as I have said, to make a general examination of the business. I was not to examine any of the vouchers nor, in detail, any of the entries. I simply glanced over the account to see if there was any especially large amount that would attract my attention.

1533 Q. Did you express to Mr. James E. Callaghan or Mr Geo. W. Beck or any other person in the defendants' store that you were perfectly satisfied with Mr. Beck's statement of the expense?

A. I could not possibly have said that, because I knew nothing about it. I very likely may have stated that I saw nothing as I glanced over the accounts that would excite my suspicion; that is probable, but it is not possible for me to have stated that I was thoroughly satisfied, because I did not examine them.

Cross-examination by Mr. HIGH:

Q. They furnished you access to all information you desired, did they not?

A. They did. I asked for the books and they gave them to me, possibly one after the other; possibly one book, but I think more than one.

Q. And the book-keeper rendered you such assistance as he could?

A. He opened the accounts and pointed out to me and left me to look over them one after another. As I did I glanced at the accounts one after another.

Q. You had perfect freedom of examination as far as you desired?

A. Yes, sir.

Q. No obstacles were put in your way?
A. No, sir.
Q. You are an expert accountant, are you not?
1534 A. I am.
Q. How many years experience have you had?
A. About forty.

Complainants rests.

It is stipulated and agreed that the signatures of the various witnesses are waived.

And thereupon defendants read in evidence the further deposition of James E. Callahan as follows:

SATURDAY, *Oct.* 11, 1884—2 p. m.

JAMES E. CALLAGHAN, recalled on behalf of defendants, examined by Mr. HIGH, testifies:

Q. Have you examined the sheets submitted by Mr. Myers in his recent examination concerning certain volumes which he claims you have omitted from you former statement and testimony?
A. Yes, sir.
Q. Have you compared these entries made by Mr. Myers in these sheets with the original sales books, and also with the twenty-five sheets prepared by you in connection with your former examination?
A. Yes, sir.
Q. From that comparison what do you find to be the fact as to whether any of the volumes which Mr. Myers in his sheets claims that you omitted are included in the former statement?
A. I find that some are included in my statement; others of them are in his as new copies, when the charge shows the set to have been second hand. I find one instance where vol. 41 is
1535 in Mr. Myers' statement as not being in mine, but the charge shows it was not sold. Then another one, vol. 43, accounted for in my statement at $3.00 in place of $3.50, as should be, and in Mr. Myers' statement is not the same, and put down as not accounted for at all.
Q. Have you prepared a statement or memoradum showing in detail which of the volumes claimed by Mr. Myers in his recent statement to have been omitted by you were in fact included?
A. Yes, sir.
Q. Will you produce that statement?
A. I will.

Mr. HIGH: I offer the statement in evidence, marked as Exhibit 2 to the deposition of James E. Callaghan.

Q. Does that statement correctly represent the volumes that were included in your former sheets and examination which Mr. Myers claims you omitted?
A. Yes, sir.
Q. How many are there in all, in the aggregate?

A. Those omitted and those accounted for as new in Mr. Myers' statement, but as second hand as shown by the charge in our books. There is 17, including also one that is not sold Mr. Myers has in his statement as being sold.

Q. As the result of this examination and comparison how
1536 many of the new copies of your edition do you find that you omitted in your former statement?

A. 199.

Q. How do you account for the omission of those if you can explain it from your former examination?

A. There was 70 odd copies of three volumes, I think, that were charged on the sales book at a date prior to that on which I commenced my investigation. Supposing I had reached the starting point I began, but in fact there were charges on pages preceding that I did not see at all.

Q. How did you fix the starting point in this case on the sales books?

A. I got the date as nearly as I could from the manufacturing book, and then turned to that date in the sales book and there found what looked very much like a starting point, and I commenced my investigation from that.

Q. You supposed, then, in this case that the date shown on the manufacturers' book as the date when you received these first volumes would be proper date to begin at?

A. Yes, sir; and relied entirely upon the date. In one instance the date wasn't given, and I kept turning over the book page by page until I found the starting point.

Q. And it seems in this case you didn't go back far enough?

A. Yes, sir.

1537 Q. As to the other omissions, how do you account for them?

A. They are scattered through the different sales books, and in examination it would make the omission probably of 16 or 17 sets or entries of those volumes.

Q. How many sales books did you examine in making up your former statement?

A. From 18 to 25, both inclusive. Eight sales books.

Q. How many pages in each of these books?

A. 720 or 730.

Q. And a great many thousand entries of sales of all sorts of books to people all over the country?

A. Yes, sir; the entries average five or six to a page. Some have ten or twelve entries, others four or five, and some only one—probably average five or six to a page.

Q. Have you also examined with reference to the price received by defendants for these 199 copies which you admit were omitted from your former statement?

A. Yes, sir.

Q. State how you made that examination and computation.

A. When single volumes were sold I took the price at which sold,

and where sold in sets. I figured on the same basis as I used in making up my former statement.

Q. As you explained fully in connection with your former examination?

1538 A. Yes, sir.

Q. Have you prepared an itemized statement showing the cost of these different volumes and the expense to the defendants of the binding, and also the expense of sale?

A. Yes, sir.

Q. Is that the paper you now produce?

A. Yes, sir.

Mr. HIGH: I offer in evidence the paper produced, to be marked Exhibit 3 to the deposition of James E. Callaghan.

Q. Please explain the figures and columns on that exhibit.

A. The first column is the "volume;" second, "number of copies sold not accounted for in my former statement;" third column, "total receipts" for these volumes; fourth column, "average price per volume," and below the cost of binding these 199 volumes at 45 cents a volume.

Q. Explain where you got the cost of binding.

A. I took the price we were paying for binding at the time these volumes were sold—that is, these volumes in question on this statement.

Q. Estimating the binding at 45 cents per volume?

A. Yes, sir; and the other items the proportion of the expense of doing the business was applied to those volumes.

Q. That is taken from Mr. Beck's statement and exhibit as to the "expense account," is it not?

A. Yes, sir.

1539 Mr. COTHRAN: I object to that portion of the testimony as not being established by any competent evidence.

Q. Is this exhibit a correct statement of the matters therein, so far as you are able to make it from the data in your possession?

A. Yes, sir.

Q. Except as to the expense account, which you figured from Mr. Beck's deposition?

A. Yes, sir.

Q. What is the average price per volume?

A. Total average, $4.07.

Cross-examination by Mr. COTHRAN:

Q. Mr. Callaghan, did you make up your statement of "binding" from any entries of the amount paid for binding these volumes that you found on your books?

A. I found by examining the bills—our binding bills—with the date at which these volumes sold and found we were paying 45 cents a volume for binding those volumes of Illinois Reports.

Q. How did you figure the amount of binding upon the volumes taken in your former statement of volumes sold?

A. I am not positive; my recollection is that I figured only on the volumes given in my statement.

Q. At that price per volume, or from the amount you found on your books you had paid for such volumes?

1540 A. From the amount I found on our books we had paid for binding, which, of course, varies; at one time one price, and at another period another.

Q. Did you, in making up this last statement, find any other entries on your books or amounts paid for binding these Illinois Reports, 39 to 46, than the figures included in your former statement?

A. I do not remember what the figures were in my former statement, but I suppose that they must be the same, inasmuch as both times I obtained my information the same way.

Q. Do I understand you, Mr. Callaghan, now to say that you find any entries on your books of the amount of money you paid for binding these 199 volumes which you now add to those you have already testified to as having sold; am I right?

A. I find on our books that we paid 45 cents a volume for binding these volumes of Illinois Reports. At the time during which they were sold we evidently bound 199 copies and paid the bill; therefore we paid for these 199 copies 45 cents each.

Q. That is the way you arrive at it?

A. Yes, sir.

Q. And not from entries which you find in your books of cash paid for binding, so much for so many copies, as you received them from the bindery?

1541 A. Yes, sir; I found them 10 volumes of v. 44, 10 v. 45, 5, 46.

Q. In what books did you find them?

A. In the bindery bills.

Q. Does that appear on the manufacturing book?

A. No, sir; not the price paid per volume for binding; that price appears on the bills of the binder on the original entry.

Defendants rest.

Number volume.	Number copies.	Total receipts.	Average receipt pr. volume.	Stereotyp. & comp.	Paper.	Press-work.	Binding.	Editorial work.	Expense %., 17%.	Total cost.	Number printed.	Number bound.
39	286	1,242 44	4 34	1,307 45	126 00	46 00	130 18	324 94	211 21	2,145 78	468	328
41	272	1,190 63	4 38	997 55	121 50	44 00	123 08	324 94	202 40	1,813 47	344	344
42	296	1,282 63	4 33	778 42	122 06	45 00	134 76	324 94	218 04	1,623 22	497	347
43	267	1,170 08	4 38	1,003 93	151 20	45 00	120 40	324 94	198 91	1,844 38	481	351
44	268	1,185 94	4 42	1,464 44	147 00	88 50	121 08	324 94	201 60	2,347 56	518	338
45	291	1,251 42	4 30	954 08	173 56	64 50	132 48	324 94	212 74	1,862 25	564	344
46	310	1,325 83	4 27	1,013 67	126 00	46 00	141 70	324 94	225 39	1,877 70	470	402
Total	1,990	8,648 97	4 34	7,519 54	967 32	379 00	903 63	2,274 58	1,470 29	13,514 36	3,372	2,454

1543 Ex. 2 to Jas. E. Callaghan's Ev. J. I. Bennett, Master, &c.

E. Meers, 20–176, vol. 39.
O. Allen, 20–183, " 39.
W. R. Kelley, 20–507, vol. 41.
S. De Wolf, 21–342, vol. 42, 44, 45, page 343.
Ill. Cent. R. R., 19–9, vol. 43.
Gould & Son, 20–344. "
This charge marked void on our books and charged again and accounted for on our statement, 20–351.
W. R. Lawrence, 20–442, vol. 46.
J. B. Mann, 20–442; on Myers' statement vol. 41 put down as sold. The sales book shows 34 to 39 only sold.
E. Brainerd, 21–391; Myers has vol. 39 as new; should be 2d h'd.
N. N. Cronholm, 22–146; " " " "
Zeph Winter, 24–667; " " " 46 "
C. B. Morrison, 24–411; " " " " "
Making 15 of Myers' copies duplicated.
4 " " " " 2nd h'd, in place new, not sold.
Myers' transcript, page 4, says our statement is incorrect, there being 11 at 5.00 and one at 4.00, in place of 10 at 5.00 and 2 at 4.00. Sales book shows we are correct.
H. W. Rogers, 18–272, vol. 43; accounted for in our statement at 3.00 in place of 3.50.

1544 Ex. 3. Def't Jas. E. Callaghan's Deposition.

Vol.	Number sold.	Total receipts.	Average price.
39	19	78 04	4 10
41	31	127 84	4 12
42	21	82 77	3 94
43	51	210 47	4 12
44	35	142 02	4 06
45	16	63 27	3 95
46	22	89 72	4 07
	195	794 13	4 07
	4	16 28	
	199	810 41	

	Cost.
Binding 199 copies, @ 45c	88 55
Expense, 17% on 810.41	137 76
	226 41

Ex. 3 to Jas. E. Callaghan's ev.

JOHN I. BENNETT,
Master, &c.

1545 COMP'T'- EXHIBIT "A." Prepared by Witness Clement & Referred — in his Evidence. John I. Bennett, Master, &c.

Vol.	Number sold separate from other b'ks.	Average price per vol.	Total receipts for separate vols. sold.	No. sold in connection with other books.	Total No. sold, as appears on C. & Co.'s b'ks.	Total rece-pts a. $4.58\frac{8}{10}$	Number printed.	Number on hand.
39	48	$4.58\frac{8}{10}$	220 24	287	335	$1,536 98	468	155
40	3	"	13 17	47	50	229 40	450	446
41	58	"	266 15	294	352	1,614 97	344	29
42	56	"	256 96	297	353	1,619 56	497	174
43	56	"	256 96	302	358	1,642 50	481	155
44	53	"	243 20	295	348	1,596 62	518	203
45	52	"	238 59	293	345	1,582 86	594	274
46	68	"	312 03	302	370	1,697 56	470	126
	394		$1,807 90	2,117	2,511	$11,520 45	3,822	1,562

COMP'T'- Ex. "B" to E. B. Myers' Deposition. John I. Bennett, Master, &c.

Schedule of Sales in Each Year by Callaghan & Co.

	Vol.								Total.
	39	40	41	42	43	44	45	46	
1878	----	----	----	143	150	----	----	161	*454
1879	236	9	231	96	96	232	237	95	1,232
1880	56	3	57	55	56	55	58	61	†401
1881	27	8	37	31	34	32	25	27	221
1882	9	15	9	11	9	10	10	12	85
1883	10	13	9	9	9	9	11	10	80
To Ap'l 10, 1884	5	3	5	5	5	5	3	5	36
	343	51	348	350	359	343	344	‡371	2,510

*& cash. †2,088. ‡Cash.

1546 It is stipulated by counsel for the respective parties that the volumes of the Illinois Reports in controversy, of both complainant's and defendants' edition of volumes 32 to 46, both inclusive, together with the original catalogues of both parties, which were offered in evidence as exhibits, may be produced upon the hearing of the appeal in the Supreme Court.

The above and foregoing was all the testimony offered on the hearing of said cause by either party.

And because none of said matters otherwise appear of record in this cause, the defendants have prepared and tendered this their certificate of evidence and prayed the court to sign and seal the same, which is done accordingly this 18th day of July, A. D. 1885.

H. W. BLODGETT, *Judge.*

Endorsed: Filed the 18th day of July, A. D. 1885. Wm. H. Bradley, clerk.

1547 NORTHERN DISTRICT OF ILLINOIS, *ss:*

I, William H. Bradley, clerk of the circuit court of the United States for said northern district of Illinois, do hereby certify the above and foregoing transcript, consisting of volumes one and two, to be a true and complete record of all the proceedings had in said court in the cause wherein Eugene B. Myers is the complainant and Bernard Callaghan, Andrew Callaghan, Andrew P. Callahan, Sheldon A. Clark, Marshall D. Ewell, and V. B. Denslow are the defendants, as the same appear from the records and files of said court now remaining in my custody and control.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at my office, in Chicago, in said district, this fourteenth day of September, 1885.

[Seal of Circuit Court U. S., Northern Dist. Illinois, 1855.]

WM. H. BRADLEY, *Clerk.*

1548 *Assignment of Errors.*

UNITED STATES OF AMERICA, *ss:*

In the Supreme Court, of October Term, A. D. 1885.

BERNARD CALLAGHAN, ANDREW CALLAGHAN, ANDREW P. CALLAHAN, and SHELDON A. CLARK, Appellants,

vs.

EUGENE B. MYERS, Appellee.

Appeal from the circuit court for the northern district of Illinois.

Now come the appellants in the above-entitled cause, by J. L. High, their solicitor, and show here to the court that in the record, proceedings, and decree aforesaid there is manifest error, in this, to wit:

First. The court erred in finding appellee to be the owner of the copyright of volumes 32 to 46, inclusive, of the Illinois Reports and

in decreeing a perpetual injunction and damages against appellants, because such reports are public property and not susceptible of copyright under the act of Congress, being the work of an official reporter who was a public officer of the State of Illinois.

Second. The court erred in finding appellee to be the owner of the copyright in said volumes and in decreeing a perpetual injunction and damages against appellants, because said appellee
1549 wholly failed to make any proof whatever of the date of publication of either or any of said volumes, or any competent proof of the date of depositing either or any of said volumes with the clerk of the district court of the United States for the northern district of Illinois, or to prove that the title page of either or any of said volumes was filed with the said clerk in advance of their publication, or the printed volume deposited with said clerk within three months after the date of publication, as required by the act of Congress in that behalf.

Third. The court erred in admitting that portion of each of the alleged certificates of William H. Bradley, clerk of the district court of the United States for the northern district of Illinois, as to said volumes 32 to 46, both inclusive, at the bottom thereof and following the certificate proper by said clerk of the filing of the title page of each of said volumes, being that portion of each of said alleged certificates, at the bottom thereof, which purports to show the date when each of said volumes was deposited, the same constituting no part of the clerk's certificate, but being a mere anonymous statement, when and by whom made not appearing, and the same being as to each of said volumes wholly incompetent to show the date of such deposit with the clerk of said court.

Fourth. The court erred in excluding the certificates of the auditor of public accounts and of the secretary of state of the State of Illinois, offered in evidence by appellants, showing the date of publication of volumes 32 and 34, respectively, of Illinois Reports, by the delivery to the State of 553 copies of each of said volumes and the payment therefor by the State, such delivery and pay-
1550 ment as to volume 32 being October 2, 1865, as shown by said certificates, and as to volume 34 being October 23, 1866, as shown by said certificates.

Fifth. The court erred in decreeing any relief to appellee as to volumes 32 and 34, because, even if the memoranda at the bottom of each of the alleged certificates of the clerk of the district court as to volumes 32 and 34, offered by appellee in evidence, purporting to show the date of the deposit of said volumes 32 and 34, respectively, were competent and sufficient proof as to such date, then said volume 32 was not deposited with said clerk until more than three months after the date of its publication, as shown by the certificate of the auditor and secretary of state of Illinois; and the filing of the title page of said volume 34, the publication of said volume, and the deposit thereof with the clerk of the district court all appear to have occurred on one and the same day, to wit, October 23, 1866, and it does not appear that the filing of the title page preceded the publication, as required by the act of Congress.

Sixth. The court erred in excluding the certificate of the Librarian of Congress as to the record of the original entry of volume 34, offered in evidence by appellants, the same showing the original entry of said volume to have been made by Myers and Chandler, October 23, 1866, by the deposit of the volume with no previous deposit of the title page.

Seventh. The court erred in decreeing any relief to appellee as to volumes 35 and 36, because it appears by the clerk's certificate, offered by appellee, as to volume 35 that the title was deposited with the clerk January 28th, 1867, while the printed notice on the
1551 back of the title page of volume 35, as published, purports to show its entry in the year 1866, and because, as to volume 36, the clerk's certificate shows the deposit of the title to have been made by E. B. Myers and Chandler, while the printed notice on the back of the title page, as published, purports to show that the same was entered by E. B. Myers alone.

Eighth. The court erred in finding the title to said volumes to be in appellee, appellee having wholly failed to prove any assignment or transfer of said volumes by the reporter to him, or any source or means through which he derived title to any of said volumes, and because appellee's title, if any, to said volumes and his right of action, if any, had passed to his assignee in bankruptcy by virtue of his being adjudicated a bankrupt.

Ninth. The court erred in decreeing a perpetual injunction and damages against appellants, because of appellee's acquiescence in, consent to, and ratification of the publication of said volumes by appellants, as shown in the depositions of Andrew P. Callaghan, Bernard Callaghan, Andrew Callahan, George W. Beck, and Eugene B. Myers upon the original hearing as to the infringement of volumes 32 to 38.

Tenth. The court erred in finding that the volumes, as published by appellants, were an infringement and piracy of those published by appellee and in decreeing an injunction and damages on account thereof, for the reason that each of said volumes, as published by appellants, was a new and independent work, not copied from that of appellee, but prepared by the original and independent labor of appellants' editors.

Eleventh. The court erred in compelling appellants to pro-
1552 duce their books and papers on the accounting before the master, appellee seeking a forfeiture of these volumes and appellants being thereby compelled to produce evidence against themselves in aid of such forfeiture.

Twelfth. The court erred in overruling appellants' first exception to the final report of Henry W. Bishop, master, as to the damages upon volumes 32 to 38, for refusing appellants credit for the cost of stereotyping; and their second and third exceptions to said report for refusing appellants credit for the salaries paid them at the rate of $12,000.00 per year; in overruling which exceptions the court erred, and likewise erred in confirming said report and awarding a decree in behalf of appellee thereon, the court thereby refusing ap-

pellants credit in the various particulars specified in their said several exceptions.

Thirteenth. The court erred in overruling the following exceptions to the report of John I. Bennett, master, as to the damages on volumes 39 to 46, viz:

5th exception. For finding the average selling price of appellants' volumes to be $4.46 instead of $4.34.

6th exception. For finding appellants' gross receipts from sales to be $10,231.48 instead of $9,459.38.

7th exception. For finding the known cost of volumes sold to be $4,679.55.

8th exception. For crediting appellants on their expense account with only twelve and one-half per cent. of their gross sales instead of seventeen per cent.

1553 9th exception. For finding the total cost of producing appellants' volumes to be only $5,798.04.

10th exception. For finding appellants' net receipts on sales of said volumes to be $4,433.44, whereas there were no net receipts, the expenses of production exceeding the gross receipts.

11th exception. For finding appellants' net profits on such sales and appellee's damages to be $4,433.44, and recommending a decree for appellee for this amount, there being no net profits and consequently no damages due to appellee.

13th exception. For refusing to credit appellants with the cost of production of unsold volumes.

14th exception. For refusing appellants credit for the amount paid for editorial work as part of the cost of production.

15th exception. For refusing appellants credit for stereotyping their volumes as part of the cost of production.

16th exception. For refusing appellants credit for amount paid them as salaries or compensation for their services.

17th exception. As to the mode of reporting pursued by Mr. Denslow, as unsupported by the testimony.

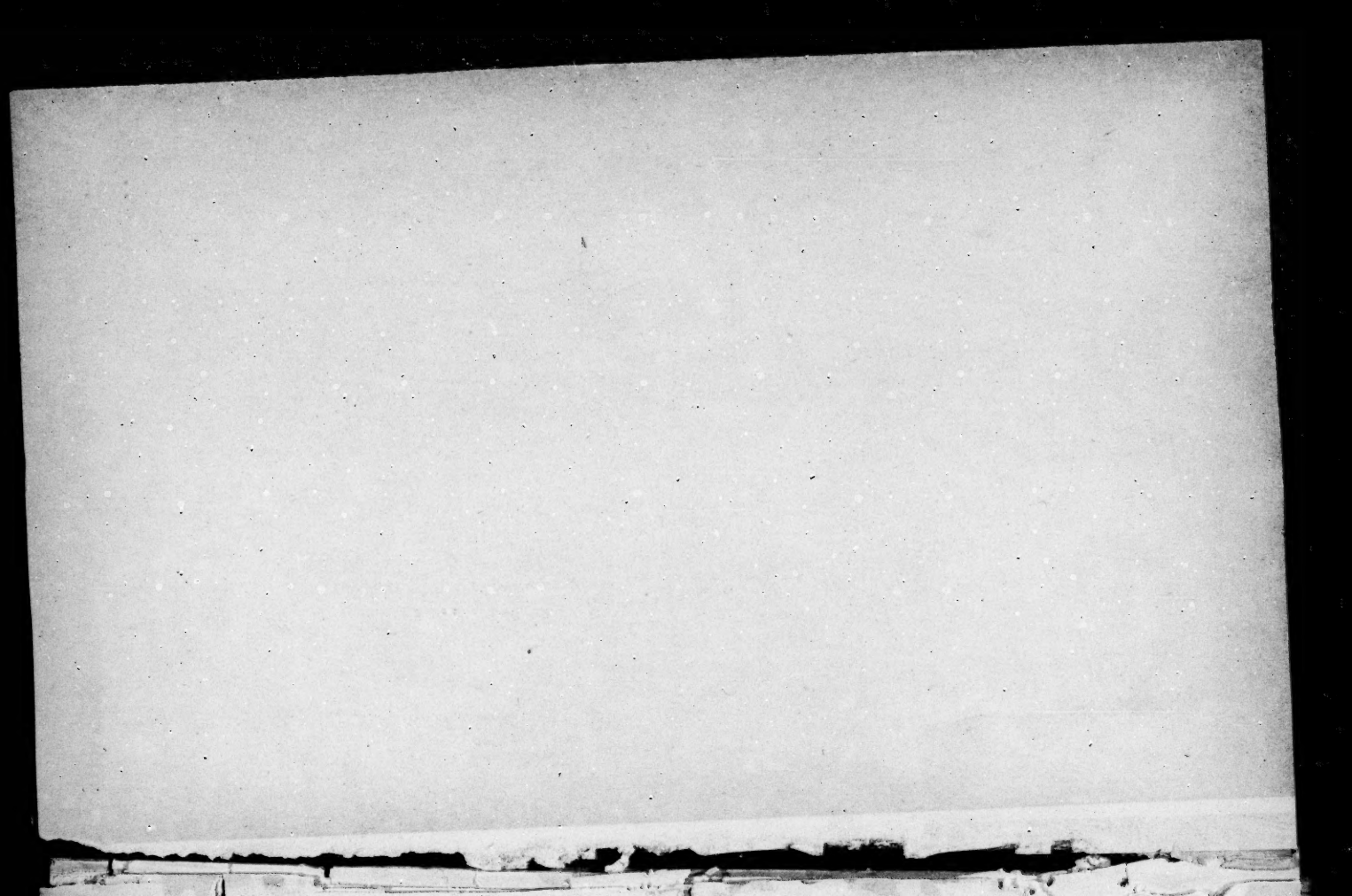
18th exception. As to the alleged refusal of appellants to produce their books showing their expenses and sales, as unsupported by the testimony.

In overruling all of which exceptions the court erred, and likewise erred in confirming the report of said master and awarding a decree in behalf of appellee thereon, the court thereby refusing to allow appellants credit in the various particulars specified in their said several exceptions.

1554 Fourteenth. The court erred in sustaining appellee's first and second exceptions to the report of John I. Bennett, master, as to volumes 39 to 46, for finding that appellants sold 2,292 copies instead of 2,448, and for disallowing appellee's claim for damages as to 156 copies sold by appellants at second hand; in sustaining which exceptions the court erred, and likewise erred in decreeing to appellee $340.70 as profits realized by appellants upon the sale of 156 copies at second hand, such copies having already once been accounted for to appellee upon their original sale, and appellee

not being entitled to a second recovery therefor when sold at second hand.

For all which errors in said record, proceedings, and decree appellants pray that the said decree and proceedings may be wholly reversed and set aside.

J. L. HIGH,
Solicitor and of Counsel for Appellants.

Endorsed on cover: N. Illinois C. C. U. S. No. 336. Bernard Callaghan, Andrew Callaghan, Andrew P. Callahan, & Sheldon A. Clark, appellants, *vs.* Eugene B. Myers. Filed October 5, 1885.